

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
KOSHER SPORTS, INC., : 10-cv-2618 (JBW) (RLM)  
Plaintiff, :  
 :  
- versus - : U.S. Courthouse  
 : Brooklyn, New York  
QUEENS BALLPARK COMPANY, LLC., :  
Defendant : June 28, 2011  
-----X

**P A R T I A L L Y   S E A L E D**

TRANSCRIPT OF CIVIL CAUSE FOR EVIDENTIARY HEARING  
BEFORE THE HONORABLE ROANNE L. MANN  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**

**For the Plaintiff:**

**Ira D. Tokayer, Esq.**  
**Leo Klein, Esq.**  
**Julie Fessel**  
Ira D. Tokayer, Esq.  
405 Lexington Avenue  
7th Floor  
New York, NY 10018

**For the Defendant:**

**Avery S. Mehlman, Esq.**  
**Jonathan Adler, Esq.**  
Herrick Feinstein, LLP  
2 Park Avenue  
New York, NY 10016

**For Non-Party Aramark:**

**David Field, Esq.**  
Lowenstein Sandler  
1251 Avenue of the Americas  
New York, NY 10020

**Transcription Service:**

**Transcription Plus II, Inc.**  
3589 Tiana Street  
Seaford, N.Y. 11783  
Transcriptions2@verizon.net

Proceedings recorded by electronic sound-recording,  
transcript produced by transcription service

Proceedings

1 THE CLERK: Civil Cause for Civil Hearing,  
2 docket number 10-CV-2618, Kosher Sports, Inc. v. Queens  
3 Ballpark Company, LLC.

4 Counsel, please state your appearances for the  
5 record.

6 MR. TOKAYER: Ira Tokayer for the Plaintiff,  
7 Kosher Sports. With me is Leo Klein.

8 THE COURT: Welcome.

9 MR. MEHLMAN: Avery Mehlman for QBC, along with  
10 Mr. Adler, as well as in-house counsel for QBC, James  
11 Denniston. Good morning, your Honor.

12 THE COURT: Good morning.

13 And Mr. Tokayer, if you would just introduce  
14 the individuals seated with you at counsel table.  
15 Mr. Katz and?

16 MR. TOKAYER: This is Julie Fessel, who is an  
17 assistant of mine.

18 THE COURT: All right. Ms. Fessel, how do you  
19 spell your last name.

20

21 MS. FESSEL: F like Frank, e-s-s, like Sam,  
22 e-l.

23 THE COURT: All right. Welcome to all of you.  
24 Please be seated. All right.

25 And I understand that we also have present

Proceedings

1 counsel for non-party witness Aramark.

2 MR. FIELD: Yes, your Honor. My name is David  
3 Field, Lowenstein Sandler, for the non-parties in this  
4 matter brought here to facilitate the witnesses.

5 THE COURT: All right. You're also welcome.

6 And I understand we have a number of witnesses  
7 who are here. We do have two attorney conference rooms,  
8 so they're welcome to use those. I don't know if it's  
9 necessary to go out and give them instructions about  
10 where they should be. Apparently not.

11 This is on for an evidentiary hearing on  
12 Plaintiff's motion to -- for contempt. I just want to  
13 cover a few preliminary matters.

14 I also have cross-motions for sanctions for  
15 discovery violations. I do not intend to address those  
16 now. If we have time at the conclusion of the hearing,  
17 we can address those. But we have a number of witnesses  
18 here, and it's going to be a long day. And I would like  
19 to get the contempt hearing out of the way first. If  
20 necessary, we can schedule another proceeding on the  
21 other pending motions.

22 I have received from both sides their  
23 respective witness lists and exhibit lists as well as  
24 pre-marked copies of the exhibits that each intends to  
25 offer at trial. And I note that the Plaintiff's

Proceedings

1 exhibits, many of them involve e-mails to and from  
2 representatives of QBC. I would like to move this  
3 proceeding along so that we can finish in a day.

4 So let me ask Mr. Mehlman, is there any dispute  
5 about the authenticity of these exhibits?

6 MR. MEHLMAN: No, Your Honor. And  
7 preliminarily, we wish to move in all the deposition  
8 testimonies that we've turned over. And I imagine that  
9 the majority if not all of those exhibits were discussed  
10 during the course of the deposition testimony. I believe  
11 almost all of them were. So we do not in any way  
12 question the authenticity of those exhibits.

13 THE COURT: Of -- you're talking about the --  
14 you switched gears. You were talking about the  
15 depositions. You don't dispute the authenticity of the  
16 communications?

17 MR. MEHLMAN: No. No.

18 THE COURT: So that we can deem them to be in  
19 evidence?

20 MR. MEHLMAN: Correct.

21 THE COURT: All right. And is there any  
22 objection from Plaintiff to the proffer by QBC to  
23 introduce the deposition transcripts in evidence?

24 MR. TOKAYER: Yes, Your Honor.

25 THE COURT: On what basis?

Proceedings

1 MR. TOKAYER: If the witness are available then  
2 they should testify.

3 MR. MEHLMAN: The only transcripts that I would  
4 ask to move into evidence that I turned over to Mr.  
5 Tokayer were the transcripts of the witnesses that are  
6 going to testify. Those are the transcripts of Mr.  
7 Kleckner, Mr. Katz and Mr. Landeen. Those are the  
8 transcripts of their depositions that I asked to move  
9 into evidence. I did not ask or turn over or list on my  
10 lists any other transcripts.

11 THE COURT: All right.

12 MR. TOKAYER: So Mr. Funk?

13 MR. MEHLMAN: Yes. I'm sorry. Mr. Kleckner,  
14 Mr. Funk -- I apologize -- Mr. Landeen and Mr. Katz,  
15 those are the three transcripts that we're wishing and  
16 we're --

17 THE COURT: Four transcripts.

18 MR. MEHLMAN: Four. I apologize, Your Honor,  
19 four transcripts.

20 THE COURT: All right. So all of these  
21 witnesses are testifying. So does Plaintiff withdraw his  
22 objection?

23 MR. TOKAYER: Well, these witnesses are all --  
24 have all been subpoenaed to be here. They're all  
25 available to testify and they will testify. There's no

## Proceedings

1 reason or basis for the depositions therefore to be  
2 admitted into evidence or the record to be otherwise  
3 cluttered.

4 THE COURT: Well, Mr. Katz is an adverse party,  
5 so his transcript could be admitted as the admission of a  
6 party opponent. So I will overrule that objection. And  
7 while I certainly think this is going to delay the  
8 procedure, I will allow the defense to offer designated  
9 portions of the remaining transcripts into evidence.

10 MR. MEHLMAN: Your Honor, this is an  
11 evidentiary hearing; this is not a trial. I really was  
12 hoping and I don't see any legal reason why depositions  
13 and statements of the witnesses that will be testifying  
14 today, which are accurate reflections of their  
15 testimonies, should not be moved into evidence as part of  
16 the record for the purpose of evidentiary hearing.

17 If -- Mr. Tokayer could have his objection. I  
18 don't know what the basis for objection is. Cluttering  
19 the record is not really a legal basis for objecting. I  
20 do not want to have to go and re-question every witness  
21 regarding all the testimony in their deposition. We were  
22 hoping that the testimony today in court would go along  
23 with their deposition testimony, and I see no reason, no  
24 legal reason why for the purposes of an evidentiary  
25 hearing that the prior statements under oath of these

## Proceedings

1 witnesses taken during depositions that were conducted by  
2 Mr. Tokayer should not be part of the record. And to say  
3 other -- I don't see a legal reason for not allowing it.  
4 Cluttering the record is not a legal reason.

5           We have a right to rely upon the statements  
6 that were made under oath at the depositions, and we  
7 expect to. And I think it would be unfair to the Court's  
8 time to have to go through all the testimony that is  
9 already on the record in these depositions once again  
10 during the course of this hearing. This hearing is an  
11 evidentiary hearing and not a trial.

12           THE COURT: Well, what are you proposing then.  
13 Because you're suggesting -- when are you going to  
14 designate those portions that you believe are relevant to  
15 this proceeding? Because otherwise, you're saying that  
16 the Court should go through the entire deposition  
17 transcript.

18           MR. MEHLMAN: I agree. That's why at the  
19 conclusion of the hearing QBC was going to ask the  
20 Court's permission to put in post-hearing memorandums to  
21 the Court outlining both our legal argument as well as  
22 the factual statements that were adduced both at the  
23 hearing and during the course of the depositions to  
24 highlight to the Court what we believe to be the facts,  
25 and then analyze those facts under what we believe to be

## Proceedings

1 the appropriate law and submit that to the Court as  
2 opposed to hearing memoranda. And that is what we expect  
3 to do with the Court's permission. And we would like --  
4 well, we think should be permitted to use statements made  
5 by the witnesses at the depositions during the course of  
6 the deposition.

7 THE COURT: Mr. Field, do you want to be  
8 seated?

9 MR. FIELD: Your Honor, actually I would like  
10 to speak when you get to the exhibits. I have a  
11 confidentiality concern not an admissibility or relevancy  
12 concern. But I want to address some of my documents,  
13 which are being used by these parties, on a  
14 confidentiality issue. If you want me to do it now, I'll  
15 be glad to.

16 THE COURT: Why don't you have a seat, and I  
17 will hear from you before we begin the testimony.

18 Anything else, Mr. Mehlman? I'd like to move  
19 this along.

20 MR. MEHLMAN: No. I just want to know if the  
21 Court is going to grant us permission to cite to the  
22 deposition testimony in a post-memorandum brief. And  
23 therefore, we ask that these depositions of the witnesses  
24 that are being called today be made part of the record.

25 THE COURT: Well, that -- you can ask that



## Proceedings

1 question. I'm not prepared to answer it because I didn't  
2 -- I haven't even decided about whether there would be  
3 post-hearing briefing.

4 Mr. Tokayer, you want to address the issues  
5 raised by Mr. Mehlman?

6 MR. TOKAYER: Under the federal rules, if a  
7 witness is available to testify he should testify, and  
8 depositions are not otherwise permissible. If Mr.  
9 Mehlman wants to designate portions, I'm prepared to take  
10 a look at those portions and perhaps re-designate other  
11 portions. But I would object to that procedure.

12 If the witnesses that he identified are all  
13 present, I will be calling each and every one of them,  
14 and Mr. Mehlman will have an opportunity to also examine  
15 those witnesses. I believe they are also identified by  
16 Mr. Mehlman in his witness list.

17 THE COURT: Well, what is the prejudice from  
18 having the full record before the Court?

19 MR. TOKAYER: There are portions of those  
20 transcripts that are not only irrelevant but that are  
21 prejudicial I believe. Those depositions were taken not  
22 in a cross-examination mode. I did not have an  
23 opportunity to examine those witnesses fully on all the  
24 documents nor was I anticipating that that testimony  
25 would be used in court. I was preparing myself to use --

## Proceedings

1 to get those facts out and to use portions of those  
2 depositions at a hearing or at a trial later to impeach  
3 the witnesses. But the -- it was not designed to be used  
4 at trial, and I fully anticipated that those people would  
5 be available to testify.

6 At the beginning of each deposition, I asked  
7 questions about where they lived and whether or not they  
8 had any plans to be outside of the jurisdiction. And in  
9 fact, each of those witnesses was identified by me for  
10 purposes of this hearing as a witness and identified as  
11 well by Queens Ballpark Company.

12 THE COURT: Just remind me, prior to my  
13 scheduling and evidentiary hearing I recall there was a  
14 discussion with counsel about whether or not the  
15 evidentiary hearing should proceed solely on the basis of  
16 transcripts. What was -- remind me, what was the  
17 Plaintiff's position on that?

18 MR. TOKAYER: That the witnesses had to appear  
19 in court so that the Court could make a credibility  
20 determination upon examining those witnesses and seeing  
21 their demeanor and having them testify in court. And  
22 that's why Your Honor ruled that the hearing should go  
23 forward.

24 THE COURT: Mr. Mehlman, would you be prepared  
25 to designate specific portions of the transcripts that

Proceedings

1 you wish to offer?

2 MR. MEHLMAN: Yes, Your Honor, but not at this  
3 time. I would ask for an opportunity to do that at the  
4 conclusion of the hearing, keep the hearing open, and  
5 designate the portions that we believe are relevant and  
6 ask that those be admitted into evidence, the relevant  
7 portions of the deposition testimony.

8 THE COURT: Well, I don't think it should be at  
9 the conclusion of the hearing. I should -- I think it  
10 should be while the witnesses are still available so that  
11 they can be further questioned about those portions.

12 MR. MEHLMAN: Your Honor, if that's what the  
13 Court wants we'll have to take a break and we'll have to  
14 review that. I was -- I did not expect there to be an  
15 objection for admitting into evidence as part of the  
16 record for hearing the depositions that were taken by  
17 Plaintiff. I mean, they're accurate representations of  
18 statements made by the witnesses that are testifying.  
19 They were done under oath and they were taken down by a  
20 court stenographer.

21 THE COURT: I didn't expect there to be an  
22 objection either, and I have not definitively said that  
23 you can't offer it. But I think in fairness, if there  
24 are specific portions that you believe are directly  
25 relevant to the issues that there ought to be an

Proceedings

1 opportunity to explore those areas further.

2 All right. Let's bring out the first witness.

3 MR. MEHLMAN: Well, Your Honor, just on a  
4 scheduling issue, Mr. Howard is one of the high-ranking  
5 members of QBC. I believe his title is senior executive  
6 vice president. And he has pressing matters this  
7 morning. He was here at 9 o'clock this morning.

8 If the Court will indulge QBC and allow Mr.  
9 Tokayer to call him as the first witness, he has meetings  
10 all day long. And I believe based upon conversations  
11 that Mr. Tokayer has had with the Court, his testimony  
12 should not be lengthy. So I'm going to ask with the  
13 Court's permission if the Court could order Mr. Tokayer  
14 to call him, Mr. Howard, as the first witness.

15 THE COURT: Is there any reason not to call him  
16 first? He was the witness who in our scheduling  
17 discussions a number of weeks ago, the Plaintiff was  
18 hoping to be able to stipulate to his testimony. So I  
19 assume that he -- we can make quick work of him.

20 MR. TOKAYER: I would like to have a very brief  
21 opening and then call Mr. Katz. I think it will make  
22 things much --

23 THE COURT: I don't think an opening is  
24 necessary. I'd like to get the witnesses on and off the  
25 stand. We have quite a few witnesses, and I want to get

Proceedings

1 that done today. I'll allow you to make a closing  
2 statement.

3 MR. TOKAYER: My opening is really going to be  
4 -- I want the Court to understand, you know, what the  
5 roadmap is. It will not take more than a few minutes.  
6 But I was planning on having Mr. Katz. I think it will  
7 benefit the Court if we can call Mr. Katz first.

8 THE COURT: I've -- I have reviewed the  
9 exhibits, which I think lay out the roadmap, so I don't  
10 think it's really necessary. So can we take Mr. Howard?  
11 Let's take Mr. Howard first.

12 MR. TOKAYER: Okay, Your Honor.

13 MR. FIELD: Judge, while they're getting  
14 Mr. Howard can I address that confidentiality problem?

15 THE COURT: Yes.

16 MR. FIELD: My client was subpoenaed in this  
17 case, and we produced several thousand pages of  
18 documents, many of which are business records that is  
19 redacted sensitive business information. We were not  
20 party to a confidentiality agreement, which these parties  
21 are. So when their discovery went forward, many of those  
22 same documents were produced in unredacted form.

23 Counsel were kind enough to share with me their  
24 exhibits before this hearing, and I had a chance to go  
25 through them. And I see that the ones they're using are

## Proceedings

1 the unredacted ones, which are marked confidential by the  
2 -- basically by the Mets Production.

3 I don't know how the evidence here is going to  
4 be received in the public record, but I do have a concern  
5 that the unredacted versions of these documents, such as  
6 our contracts with percentages and things like that. So  
7 I call that to the Court's attention.

8 There is a confidentiality agreement in place,  
9 but I'd like some assurance from the parties, and to the  
10 extent Your Honor can give me that, that these documents  
11 will not find their way into the public record  
12 unnecessarily.

13 MR. MEHLMAN: Your Honor, there are -- the  
14 Court asked me regarding Mr. Tokayer's exhibits whether  
15 they were authentic, and there's no reason to believe  
16 that they're not e-mails that were mailed amongst the  
17 individuals. But there are other evidentiary issues  
18 regarding those e-mails, including many of them are for  
19 attorneys' eyes only. So certainly sharing Mr. Field's  
20 concerns, they should not be made part of the public  
21 record.

22 And certainly during discussions of certain  
23 portions of it, Mr. Katz as well as Mr. Tokayer's  
24 assistant should be removed from the courtroom as they do  
25 contain information that the Court has allowed QBC and

Proceedings

1 Aramark, for that matter, to mark as for attorneys' eyes,  
2 so those are the issues.

3 THE COURT: Well, you're going to have to alert  
4 me if and when we get to portions that are attorneys'  
5 eyes only. I'm actually surprised to hear that. But if  
6 they were designated in good faith as attorneys' eyes  
7 only and there hasn't been an objection to that  
8 designation prior to today, I do not want to spend the  
9 time now having to resolve whether or not they are  
10 properly designated.

11 So if you alert me that this is attorneys' eyes  
12 only, we will then ask Mr. Katz to leave the room during  
13 the discussion of that document. I'm not sure why Mr.  
14 Tokayer's assistant, if she's an attorney and associate,  
15 would have to leave, but I don't have the terms, the  
16 protective order in front of me.

17 MR. MEHLMAN: Certainly Mr. Katz, Your Honor.  
18 Thank you.

19 THE COURT: And in response to Mr. Field's  
20 statement, I'm somewhat surprised that there was not a  
21 written agreement entered into between the subpoenaing  
22 party and the subpoenaed party regarding confidentiality.  
23 Are these -- were these documents produced by Aramark or  
24 by QBC that you're referring to?

25 MR. FIELD: In the first instance, they were

## Proceedings

1 produced by Aramark. We redacted the confidential  
2 information so we didn't need a confidentiality agreement  
3 as you suggest.

4           Apparently, I'm not privy to the discovery  
5 between the Mets and the Plaintiff. There was discovery  
6 exchanged. There was a confidentiality agreement between  
7 those parties, which protected the same documents. So we  
8 have two versions of the same documents, redacted and  
9 unredacted.

10           They -- in my opinion, if they were going to  
11 place it into the public record they should have put the  
12 unredacted -- they should have put the redacted version  
13 in to protect the confidentiality. They didn't do that.  
14 I didn't have a chance to catch that horse before it left  
15 the barn, but now we have that version being offered here  
16 today.

17           THE COURT: The exhibits themselves if they are  
18 covered by a confidentiality agreement are going to  
19 retain that protection. They're not going to be publicly  
20 filed. They will be marked. They will be in evidence.  
21 They will be for the Court to review. They're not going  
22 to be part of the public record.

23           To the extent that there is testimony that  
24 would disclose confidential information, what we'll have  
25 to do is if it's for attorneys' eyes only I rely on the



Mr. Howard - Direct - Mr. Tokayer

1 parties to protect their information and bring that to  
2 the Court's attention so that those individuals who  
3 should not be privy to that information can be asked to  
4 leave the courtroom as for matters that are designated  
5 confidential not but confidential for attorneys' eyes  
6 only. At the present time, we do not have any outside  
7 parties present, and the transcript itself can be subject  
8 to a protective order unless and until the parties have  
9 an opportunity to review it and to designate portions  
10 that would be confidential.

11 If a member of the press or some other third  
12 party walks in, then we are going to have an issue if a  
13 lot of those documents are designated confidential. But  
14 I don't know that they have been.

15 MR. FIELD: Thank you.

16 THE COURT: All right. Mr. Treadwell (ph), if  
17 you could swear the witness.

18 (Witness takes the stand)

19 MR. CLERK: If you could state your full name  
20 and then spell your last name?

21 MR. HOWARD: David C. Howard, H-o-w-a-r-d.

22 THE COURT: All right. You may proceed.

23 MR. TOKAYER: Thank you, your Honor.

24 Does Your Honor wish me to take the podium?

25 THE COURT: It's up to you. I do want you to

Mr. Howard - Direct - Mr. Tokayer

1 stay close to a microphone so that all the questions can  
2 be recorded.

3 D A V I D H O W A R D

4 having been first duly sworn, was examined and  
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. TOKAYER:

8 Q. Good morning, Mr. Howard.

9 A. Good morning.

10 Q. How are you today?

11 A. Doing well, thanks.

12 Q. Thank you. My name is Ira Tokayer. I'm the attorney  
13 for Kosher Sports. I don't believe we've met, have we?

14 A. We have not.

15 Q. What is your title with the Mets?

16 A. Executive vice president business operations.

17 Q. And are you also admitted to practice as an attorney  
18 in the state of New York?

19 A. I am.

20 Q. And have you been an attorney in the state of New  
21 York since 1986?

22 A. Yes.

23 Q. Did Queens Ballpark Company, which I'll refer to as  
24 QBC, enter into a 30-year deal with Aramark for food,  
25 beverage and retail merchandise services at Citi Field?

Mr. Howard - Direct - Mr. Tokayer

1 A. Yes.

2 Q. When?

3 A. I don't recall the year that the contract was  
4 actually signed, but my recollection is about a couple  
5 years before Citi Field opened. So I would say about  
6 2007.

7 Q. And Citi Field opened for the 2009 season?

8 A. Yes.

9 Q. And Aramark was the concessionaire at Shea Stadium,  
10 was it not?

11 A. Yes.

12 Q. And at Shea Stadium the Mets received a percentage of  
13 Aramark's gross revenues from sales of food, beverage and  
14 retail merchandise, correct?

15 A. Yeah. I believe that's what the agreement provided.

16 Q. Okay. And under the new arrangement entered into  
17 approximately in 2007, QBC and Aramark share a portion of  
18 the net, correct?

19 A. I think it's a little more complicated than that so  
20 I'd rather let the contract speak for itself.

21 Q. And what contract are you referring to?

22 A. The contract between QBC and Aramark.

23 Q. And is that called the usage agreement?

24 A. I believe it is, yes.

25 Q. Let me show you what we pre-marked as Exhibit 2.

Mr. Howard - Direct - Mr. Tokayer

1 MR. TOKAYER: If I may approach, Your Honor, I  
2 have a binder --

3 THE COURT: You may.

4 MR. TOKAYER: -- for the witness.

5 THE COURT: That's Plaintiff's Exhibit 2.

6 MR. MEHLMAN: Your Honor, we object at this  
7 time. We ask that Mr. Katz be asked to leave the  
8 courtroom during the questioning regarding Exhibit 2,  
9 which is the usage agreement, which is for attorneys'  
10 eyes only. It has been demarcated that way by the Court  
11 with the consent and the agreement between the parties  
12 when it was turned over.

13 THE COURT: All right. And I see from the pre-  
14 marked exhibit it does say highly confidential,  
15 attorneys' eyes only. Therefore, during the testimony  
16 concerning this document I'm going to ask Mr. Katz to  
17 step outside.

18  
19  
20  
21  
22  
23  
24  
25

Mr. Howard - Cross - Mr. Mehlman

1 MR. MEHLMAN: May I inquire, Your Honor?

2 CROSS-EXAMINATION

3 BY MR. MEHLMAN:

4 Q. Looking at Exhibit No. 1, the Sports Business Daily  
5 article that Mr. Tokayer showed you early during your  
6 examination, is in fact the Aramark and Mets agreement a  
7 joint venture, Mr. Howard?

8 MR. TOKAYER: Objection.

9 THE COURT: I'll allow it.

10 THE WITNESS: It is not a joint venture.

11 Q. Could you explain?

12 A. Yeah. When -- at the Mets, whenever we have  
13 significant contractual relationships we often refer to  
14 them as partnerships because we highly value those  
15 critical relationships, and that extends to broadcasts  
16 relationships, major sponsorship relationships, certainly  
17 the naming rights relationship with Citi and the  
18 relationship with Aramark. We refer to them as  
19 partnerships in the sort of common parlance not in the  
20 legal sense of the term. And that is the -- essentially,  
21 the gist of my comments to the Sports Business Daily.

22 Q. What is the relationship between Aramark and QBC?

23 A. The relationship between Aramark and QBC is a rights  
24 relationship, and the rights are set forth in the usage  
25 agreement.

Mr. Katz - Direct - Mr. Tokayer

1 Q. Thank you very much.

2 MR. MEHLMAN: Nothing further, Your Honor.

3 THE COURT: All right. Any redirect?

4 MR. TOKAYER: No, Your Honor.

5 THE COURT: All right. Mr. Howard, you may  
6 step down, and you're free to leave.

7 THE WITNESS: Thank you, Judge.

8 THE COURT: All right. Mr. Tokayer, you can  
9 call your next witness.

10 MR. TOKAYER: I call to the stand Mr. Jonathan  
11 Katz.

12 THE CLERK: Mr. Katz, if you could remain  
13 standing please. Please raise your right hand.

14 (Witness takes the stand)

15 MR. CLERK: If you could state your full name  
16 and then spell your last name?

17 MR. KATZ: Jonathan Katz, K-a-t-z.

18 THE COURT: All right. Mr. Tokayer, you may  
19 proceed.

20 MR. TOKAYER: Thank you, your Honor.

21 J O N A T H A N K A T Z

22 having been first duly sworn, was examined and  
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. TOKAYER:

Mr. Katz - Direct - Mr. Tokayer

1 Q. Good morning, Mr. Katz.

2 A. Good morning.

3 Q. Please introduce yourself to the Magistrate Judge.

4 A. I'm Jonathan Katz, president of Kosher Sports.

5 THE COURT: I'm aware of that.

6 Q. And what is the business of Kosher Sports generally?

7 A. To offer kosher food products at stadiums and  
8 entertainment venues throughout the country.

9 Q. How long have you had a relationship with the Mets?

10 A. Since 2006.

11 Q. And did you have an agreement, a written agreement  
12 with the Mets from the beginning of your relationship?

13 A. Yes.

14 Q. With which entity did you contract at the beginning  
15 of your relationship?

16 A. Sterling Mets.

17 Q. Did there come a time when Kosher Sports entered into  
18 an agreement with respect to Citi Field?

19 A. Yes.

20 Q. And with whom was that agreement entered into?

21 A. QBC.

22 Q. What is your understanding of QBC's relationship to  
23 Citi Field?

24 MR. MEHLMAN: Objection, relevance, your Honor.

25 THE COURT: I'll allow it for background.

Mr. Katz - Direct - Mr. Tokayer

1 THE WITNESS: QBC was -- is -- operates the  
2 ballpark Citi Field for the Mets.

3 Q. Let me invite your attention to Exhibit 4 in the  
4 binder before you. Do you recognize that document?

5 A. Yes.

6 Q. How do you recognize that document?

7 A. I signed this documented.

8 Q. And what is it?

9 A. It's the agreement between Kosher Sports and Queens  
10 Ballpark Company.

11 MR. TOKAYER: I'd like to move Exhibit 4 into  
12 evidence, Your Honor.

13 MR. MEHLMAN: No objection, Your Honor.

14 THE COURT: Received.

15 (Plaintiff's Exhibit No. 4 received into evidence)

16 Q. And I see the agreement is dated January 23rd, 2008.  
17 Is that approximately the time that you entered into this  
18 agreement?

19 A. I believe we entered into this agreement or signed  
20 the agreement on January 31st, 2008.

21 Q. With whom did you negotiate the agreement?

22 A. With the Mets.

23 Q. And who specifically?

24 A. Greg Stangel.

25 Q. Now, did all the terms that you and Mr. Stangel



Mr. Katz - Direct - Mr. Tokayer

1 negotiated end up in Exhibit 4?

2 MR. MEHLMAN: Objection, relevance, your Honor.  
3 This is a contempt hearing limited to the issues of the  
4 contempt motion by Mr. Tokayer.

5 THE COURT: What is the relevance of this to  
6 the issues before the Court?

7 MR. TOKAYER: If I can have a little latitude,  
8 Your Honor, these issues go to control and whether or not  
9 QBC in fact controls Aramark.

10 THE COURT: Well, I want to remind you that the  
11 issue before me is not the defendant's liability on the  
12 claims in the case. It -- this is specifically a  
13 contempt proceeding. And while I will allow you some  
14 latitude for purposes of background, we -- I will not  
15 allow you to try your entire case in one day at a hearing  
16 with a limited purpose.

17 MR. TOKAYER: We absolutely do not wish to do  
18 that. This evidence goes towards whether or not Aramark  
19 acted on behalf of the Mets, which is the issue before  
20 you today.

21 MR. MEHLMAN: Objection, Your Honor. I don't  
22 believe that's the issue before the Court.

23 THE COURT: I don't believe that that is the  
24 issue. The issue is whether or not the defendant  
25 violated the terms of a preliminary injunction.

Mr. Katz - Direct - Mr. Tokayer

1 MR. TOKAYER: Whether or not QBC acted or any  
2 of its officers, directors, agents or anyone on its  
3 behalf took any action directly or indirectly with  
4 respect to Kosher Sports' operations at Citi Field. This  
5 goes to that issue.

6 THE COURT: Well, let's not linger on what  
7 happened in 2008 when the issues before the Court are  
8 what happened after August of 2010.

9 BY MR. TOKAYER:

10 Q. Again, did all the terms of the agreement that you  
11 negotiated with Mr. Stangel end up in Exhibit 4?

12 A. No.

13 Q. Okay. Which terms did not end up in Exhibit 4?

14 MR. MEHLMAN: Objection. Objection, Your  
15 Honor, again, relevance. This is a contempt hearing.  
16 It's specifically on a motion by Plaintiff referencing  
17 specific actions that happened after August of 2010.  
18 Nothing that's being discussed here is relevant to that  
19 issue. It's regarding specific allegations of actions  
20 committed by members of QBC after August 2010 that  
21 indirectly or directly affected Mr. Katz's operations.

22 THE COURT: I'd like a proffer. What do you  
23 expect the witness to testify?

24 MR. TOKAYER: It goes to the relationship  
25 between Kosher Sports --

Mr. Katz - Direct - Mr. Tokayer

1 THE COURT: That wasn't my question. My  
2 question was what do you expect him to say.

3 MR. TOKAYER: He will testify that there were  
4 Aramark deal points that were negotiated by the Mets that  
5 didn't end up in Exhibit 4 because they were negotiated  
6 by the Mets but they were designed to end up in Aramark's  
7 agreement. He was assured that those points would end up  
8 in the Aramark agreement.

9 THE COURT: All right. I've heard enough. The  
10 question is what happened in 2010.

11 MR. TOKAYER: Yes. In order to find out what  
12 happened in 2010, Your Honor needs to understand the  
13 relationship between QBC and Aramark.

14 THE COURT: I'd like to know what the  
15 relationship was in 2010.

16 MR. TOKAYER: This is establishing that. But  
17 it's the same relationship --

18 THE COURT: I'll allow very brief testimony on  
19 this. But remember that you are limited to one hour of  
20 testimony from this witness, so if I were you I would  
21 move quickly to 2010.

22 BY MR. TOKAYER:

23 Q. Which items that you negotiated with Mr. Stangel did  
24 not end up in Exhibit 4?

25 A. So-called Aramark points.

Mr. Katz - Direct - Mr. Tokayer

1 Q. Were you concerned that the so-called Aramark items  
2 that you negotiated with Mr. Stangel were not in Exhibit  
3 4?

4 A. No.

5 Q. Why not?

6 A. I was assured via e-mail that Michael Landeen and QBC  
7 were on board with all the Aramark points and they were  
8 getting to the Aramark agreement.

9 Q. Mr. Landeen assured you that the Aramark points would  
10 end up in the Aramark agreement, correct?

11 A. Correct.

12 Q. Okay. And you said there's an e-mail to that effect?

13 A. Yes.

14 Q. Is Exhibit 3 that e-mail?

15 A. Yes.

16 MR. TOKAYER: And I note that Exhibit 3 is  
17 already in evidence, Your Honor.

18 THE COURT: Yes.

19 MR. MEHLMAN: Objection. When was Exhibit 3  
20 put into evidence?

21 THE COURT: Well, there's no dispute about  
22 authenticity, and the witness has just identified this  
23 document as constituting the communication that he just  
24 referred to. So is there any objection?

25 MR. MEHLMAN: No, Your Honor.

Mr. Katz - Direct - Mr. Tokayer

1 THE COURT: Received.

2 (Plaintiff's Exhibit No. 3 received into evidence)

3 Q. Was a press release, Mr. Katz, issued announcing the  
4 agreement between QBC and Kosher Sports?

5 A. Yes.

6 Q. Who issued that press release?

7 A. The Mets.

8 Q. How did you become aware of that press release?

9 A. It was sent to me beforehand before it was published,  
10 just a draft, take a look at it, and then I saw it on the  
11 Internet on their website after it was published.

12 Q. And did that press release announce the Mets' and  
13 Kosher Sports' agreement for Citi Field?

14 MR. MEHLMAN: Objection, Your Honor. The  
15 witness is being led, Your Honor. I think an appropriate  
16 question should be asked.

17 THE COURT: Yes. Objection sustained.

18 Q. Look at Exhibit 6, Mr. Katz, would you? Is that the  
19 press release that you saw in or about August 2008 before  
20 it was published and then after it was published?

21 MR. MEHLMAN: Objection.

22 THE COURT: Again, you're -- can you just ask  
23 non-leading questions? Can you identify Plaintiff's  
24 Exhibit 6?

25 THE WITNESS: Yes. It's the press release that

Mr. Katz - Direct - Mr. Tokayer

1 was issued by the Mets on the Mets website announcing the  
2 Mets and Kosher Sports signed a new multi-year agreement  
3 for Citi Field.

4 MR. TOKAYER: I'd like to move Exhibit 6 into  
5 evidence, Your Honor.

6 THE COURT: Any objection?

7 MR. MEHLMAN: Only relevance, Your Honor.

8 THE COURT: Received.

9 (Plaintiff's Exhibit No. 6 received into evidence)

10 Q. At the time of the press release, Mr. Katz, did  
11 Kosher Sports have an agreement with Aramark?

12 A. No.

13 Q. When was that agreement signed?

14 A. Sometime in January of 2009.

15 Q. Now, can a subcontractor such as Kosher Sports enter  
16 into an agreement with Aramark for Citi Field without an  
17 agreement with QBC first?

18 MR. MEHLMAN: Objection, Your Honor.

19 THE COURT: Sustained.

20 Q. Let me direct your attention, Mr. Katz, to Exhibit  
21 10. Is that an e-mail that you received from Mr. Funk on  
22 September 1st, 2009?

23 A. Yes.

24 Q. And let me direct your attention to Exhibit 11. Is  
25 that an e-mail that you received from Mr. Vincenzo (ph)

Mr. Katz - Direct - Mr. Tokayer

1 in September of 2009?

2 A. Yes.

3 MR. TOKAYER: Your Honor, I'd like to move  
4 Exhibits 10 and 11 into evidence.

5 THE COURT: Any objection?

6 MR. MEHLMAN: Relevance, Your Honor. And there  
7 is no --

8 THE COURT: I'll --

9 MR. MEHLMAN: And there is no Bates number  
10 stamp on Exhibit Number 10. I don't know when it was  
11 turned over to counsel, but we never received that  
12 document just to let the record reflect. I don't believe  
13 that Mr. Tokayer turned that over during the term of  
14 discovery. And I made that objection during the course  
15 of the deposition when Mr. Tokayer admitted it or  
16 attempted to admit it.

17 Additionally, Your Honor, Number 10  
18 specifically refers to a fresh squeezed lemonade item,  
19 which is wholly irrelevant to the Kosher Sports contract  
20 that's at -- that is at issue in this case.

21 THE COURT: Exhibit 10 was -- Mr. Tokayer, was  
22 this turned over during discovery?

23 MR. TOKAYER: I don't know if it was turned  
24 over, but I also don't believe it was called for.

25 THE COURT: Well, I see from the copy of it

Mr. Katz - Direct - Mr. Tokayer

1 that it was offered as an exhibit during a deposition on  
2 May 26, 2011. So at a minimum, the defense has had it  
3 for over a month. I will allow it.

4 I will also allow Exhibit 11, again, for  
5 they're worth, and recognizing that they seem to relate  
6 to lemonade.

7 (Plaintiff's Exhibit Nos. 10 and 11 received into  
8 evidence)

9 Q. What is your relationship if any to the lemonade  
10 issue that is discussed in Exhibit 10?

11 MR. MEHLMAN: Objection, Your Honor.

12 THE COURT: I'll allow it.

13 THE WITNESS: It's another one of my companies,  
14 Fun Foods LLC.

15 THE COURT: I'm sorry. I didn't hear the  
16 answer.

17 THE WITNESS: It's another one of my companies,  
18 Fun Foods LLC.

19 THE COURT: So it's not Kosher Sports?

20 THE WITNESS: Correct.

21 Q. Now, with respect to Kosher Sports desire to operate  
22 on Fridays and Saturdays, with which entity did you first  
23 raise your desire to operate on Fridays and Saturdays?

24 MR. MEHLMAN: Objection.

25 THE COURT: I'll allow it.



Mr. Katz - Direct - Mr. Tokayer

1 THE WITNESS: The Mets.

2 Q. And with whom from the Mets specifically?

3 A. Mike Landeen.

4 Q. Who is Mike Landeen?

5 A. He is the vice president of venue services for the  
6 Mets.

7 Q. And when did you first raise that issue with Mr.  
8 Landeen?

9 A. In 2007.

10 Q. Where did you raise the Friday, Saturday operations  
11 first with Mr. Landeen?

12 MR. MEHLMAN: Objection, relevance, Your Honor.

13 THE COURT: I'll allow it. You can have a  
14 standing objection to everything preceding August of  
15 2010.

16 MR. MEHLMAN: But, Your Honor, the objection is  
17 relevance referencing the contempt hearing, and what is  
18 going on here now is exactly what I thought would happen  
19 when the Court ordered an evidentiary hearing. We're not  
20 trying the merits of the case. This case is -- this --

21 THE COURT: I'm certainly capable of focusing  
22 on the evidence that I believe goes to the issues before  
23 me. And I will allow this as background but, again,  
24 subject to the limitations I've previously stated. And  
25 if Mr. Katz cannot in the time allotted get to 2010, then

Mr. Katz - Direct - Mr. Tokayer

1 he's got problems.

2 MR. MEHLMAN: Your Honor, and I never would  
3 question the Court on not being able to adduce what is  
4 relevant, not relevant. I just don't think it's  
5 appropriate during the course of this hearing to have  
6 these questions and these answers.

7 THE COURT: And you have a standing objection  
8 for --

9 MR. MEHLMAN: Thank you, Your Honor.

10 THE COURT: -- that reason. So let's move on.

11 Q. Where did you and Mr. Landeen have that conversation?

12 A. On the concourse of Shea Stadium before a game.

13 Q. And did you approach Aramark at that time?

14 A. No.

15 Q. What did you say to Mr. Landeen in 2007 about Friday  
16 and Saturday operations and what did he respond?

17 A. I expressed my desire to him that I wanted to sell my  
18 products on Fridays and Saturdays, to which he responded  
19 he was all for it so long as I had the approval of the  
20 rabbis.

21 Q. Did you raise your desire to operate on Fridays and  
22 Saturdays at Citi Field with anyone else at the Mets?

23 A. Yes.

24 Q. With whom?

25 A. Greg Stangel.

Mr. Katz - Direct - Mr. Tokayer

1 Q. When?

2 A. September of 2007.

3 Q. What did you say to Mr. Stangel and what did he  
4 respond?

5 A. We were discussing the agreement. He had told me  
6 that the --

7 MR. MEHLMAN: Objection, Your Honor. This is  
8 hearsay now.

9 THE COURT: Who is Mr. Stangel? Who was Mr.  
10 Stangel at the time?

11 THE WITNESS: Mr. Stangel is the person that I  
12 negotiated the QBC/KSI agreement with.

13 THE COURT: I'll allow it.

14 Q. Did you complete your answer?

15 A. Can you repeat the question please?

16 Q. What did you say to Mr. Stangel about Friday,  
17 Saturday operations and what did he respond?

18 A. In the course of discussing the agreement that we  
19 signed ultimately, he had told me that the fee was going  
20 to start at \$50,000, to which I responded to him that I  
21 need to sell at every game in order to afford that fee.  
22 And he responded to me done deal, we shook hands, and I  
23 left his office.

24 Q. Did you raise the Friday and Saturday issue at that  
25 time in September 2007 with any representative of

Mr. Katz - Direct - Mr. Tokayer

1 Aramark?

2 A. No.

3 Q. When is the next time you raised the Friday, Saturday  
4 issue with the Mets?

5 A. I sent an e-mail to Pete Helfer and Rich Johns in  
6 December of 2008.

7 Q. And who is Rich Johns?

8 A. Rich Johns at that time was the resident district  
9 manager for Aramark.

10 Q. Who was Pete Helfer?

11 A. Pete Helfer replaced Greg Stengel in the Mets  
12 corporate sales department.

13 Q. Did Mr. Johns respond to your e-mail?

14 A. No.

15 Q. Did Mr. Helfer respond to your e-mail?

16 A. No.

17 Q. What did you do when you did not get a response?

18 A. I sent a copy of the e-mail that I had sent to Rich  
19 Johns and Pete Helfer to Adam Barrick at the Mets.

20 Q. And who is Adam Barrick?

21 A. Adam Barrick at the time was my contact person at the  
22 Mets.

23 Q. And when approximately did send that e-mail to Mr.  
24 Barrick?

25 A. January of 2009.

Mr. Katz - Direct - Mr. Tokayer

1 Q. And was there some back and forth with and Mr.  
2 Barrick concerning Friday and Saturday operations at that  
3 time?

4 MR. MEHLMAN: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q. Let me invite your attention, Mr. Katz, to Exhibit 8.  
7 Do you recognize that e-mail?

8 A. Yes.

9 Q. How do you recognize it?

10 A. I received it from Adam Barrick.

11 Q. And are there e-mails in this string that you also  
12 either wrote or received?

13 A. Yes.

14 Q. And what is Exhibit 11? I'm sorry, Exhibit 8, which  
15 was pre-marked -- which was marked at the --

16 A. Exhibit 8?

17 Q. Exhibit 8.

18 A. Exhibit 8 is a string of e-mails between me and Adam  
19 Barrick maybe cc'ing Pete Helfer.

20 Q. And does this e-mail contain the first e-mail that  
21 you sent to Mr. Johns and to Mr. Helfer about in 2008  
22 concerning Friday and Saturday operations?

23 MR. MEHLMAN: Objection.

24 THE COURT: Again, I've admonished you about  
25 the excessive amount of leading. Allow the witness to

Mr. Katz - Direct - Mr. Tokayer

1 testify. Don't put words in his mouth.

2 MR. TOKAYER: Yes, Your Honor.

3 Q. Let me just invite your attention to the e-mail of  
4 January 27th, 2009, I'm sorry, the last page, December  
5 18th, 2008 from you to Mr. Johns and Mr. Helfer. What is  
6 that document?

7 A. It's an e-mail I sent to Rich Johns and Pete Helfer  
8 back in December of 2008.

9 Q. I note that --

10 MR. TOKAYER: Do I need to move this into  
11 evidence, Your Honor, or is it in evidence?

12 THE COURT: Subject to the same objection, it's  
13 received.

14 (Plaintiff's Exhibit No. 8 received into evidence)

15 Q. Mr. Katz, did you operate on Fridays and Saturdays  
16 during Citi Field's inaugural season in 2009?

17 A. No.

18 Q. Why not?

19 A. QBC said no.

20 Q. When?

21 A. In March of 2009.

22 Q. How did they communicate that to you?

23 A. I was sent an e-mail by Adam Barrick.

24 Q. Okay. Let me invite your attention to Exhibit 9.  
25 What is it?

Mr. Katz - Direct - Mr. Tokayer

1 A. It's an e-mail I received from Adam Barrick on March  
2 2nd, 2009.

3 MR. TOKAYER: I'd like to move this into  
4 evidence, Your Honor.

5 THE COURT: I'm sorry. What's the number, 9?

6 MR. TOKAYER: Yes.

7 THE COURT: Received.

8 (Plaintiff's Exhibit No. 9 received into evidence)

9 Q. Did Kosher Sports operate at Citi Field on Fridays  
10 and Saturdays in 2010?

11 A. No.

12 Q. Why not?

13 A. QBC said no.

14 Q. When?

15 A. In February of 2010.

16 Q. How?

17 A. Via e-mail to my partner.

18 Q. Okay. Let me direct your attention to Exhibit 12.  
19 What is it?

20 A. It's an e-mail sent to me from David Kestenbaum (ph)  
21 forwarding me Adam Barrick's response to our -- to Friday  
22 and Saturday sales.

23 MR. TOKAYER: I'd like to move Exhibit 12 into  
24 evidence, Your Honor.

25 (Plaintiff's Exhibit No. 12 received into evidence)

Mr. Katz - Direct - Mr. Tokayer

1 Q. Mr. Katz, did there a come a time during the 2010  
2 season that you and Aramark discussed Kosher Sports  
3 operations on Fridays and Saturdays at Citi Field?

4 A. Yes.

5 Q. How did that come about?

6 THE COURT: I'm sorry. What's the time period  
7 we're talking about now?

8 Q. May of 2010. What did you and Aramark or how did it  
9 come about that you and Aramark spoke about Kosher Sports  
10 Friday --

11 MR. MEHLMAN: Objection.

12 Q. -- and Saturday --

13 THE COURT: I'll allow it.

14 Q. -- operations?

15 A. Tom Funk of Aramark sent me an e-mail saying they had  
16 heard rumblings that I planned on opening my carts on  
17 Fridays and Saturdays, and he wanted to know who from the  
18 Mets approved it.

19 Q. What did you respond?

20 A. I told him that we were anxious to open on Fridays  
21 and Saturdays, that we were waiting final approval from  
22 the Mets.

23 Q. And is Exhibit 18 the e-mail that you just referred  
24 to, to which you -- to which Mr. Funk asked you who from  
25 the Mets approved it and your response?



Mr. Katz - Direct - Mr. Tokayer

1 A. Yes, it is.

2 Q. And did the Mets in fact -- strike that. What  
3 happened next in May of 2010 with respect to your desire  
4 to operate on Fridays and Saturdays?

5 A. A couple days later I received an e-mail from Paul  
6 Schwartz of the Mets stating that it was not something  
7 that they could allow.

8 Q. Okay. And is Exhibit 19 that e-mail that you  
9 received from Mr. Schwartz stating that Friday and  
10 Saturday sales was not something that the Mets could  
11 allow?

12 A. Yes.

13 MR. TOKAYER: If I could move Exhibit 19 into  
14 evidence.

15 THE COURT: Received.

16 (Plaintiff's Exhibit No. 19 received into evidence)

17 MR. TOKAYER: Have I moved Exhibit 18 into  
18 evidence?

19 THE COURT: No.

20 MR. TOKAYER: I'd like to move that as well,  
21 Your Honor.

22 THE COURT: Received.

23 (Plaintiff's Exhibit No. 18 received into evidence)

24 Q. Did any representative of Aramark, Mr. Katz, tell you  
25 in 2009 that Aramark would not let Kosher Sports operate

Mr. Katz - Direct - Mr. Tokayer

1 at Citi Field on Fridays and Saturdays?

2 A. No.

3 Q. Did any representative of Aramark tell you in 2010  
4 that Aramark would not let Kosher Sports operate at Citi  
5 Field on Fridays and Saturdays?

6 A. No.

7 Q. Prior to April 6th of 2011, did any representative of  
8 Aramark tell you that they would not let you operate at  
9 Citi Field on Fridays and Saturdays?

10 MR. MEHLMAN: Excuse me, what date? I didn't  
11 hear.

12 Q. April 6th of 2011.

13 A. Before April 6th?

14 Q. Yes.

15 A. No.

16 Q. And did you meet with Rich Johns of -- Rich Grey of  
17 Aramark in January of 2011?

18 A. Yes.

19 Q. Who was Rich Grey?

20 A. Rich Grey is the division manager of concessions for  
21 Aramark at Citi Field.

22 Q. What kind of a meeting was that scheduled to be?

23 A. An operational meeting.

24 Q. And did you discuss Friday and Saturday sales with  
25 Mr. Grey at that time?

Mr. Katz - Direct - Mr. Tokayer

1 A. Yes.

2 Q. What did he say?

3 A. One thing he said was it was important for the Mets  
4 to give Aramark their decision and give it to them very  
5 quickly.

6 Q. And after the meeting did any representative of  
7 Aramark tell you that they would not let Kosher Sports  
8 operate at Citi Field on Fridays and Saturdays?

9 A. Yes.

10 Q. When for the first time?

11 A. April 6th, 2011.

12 Q. Who told you?

13 A. Scott Kleckner.

14 Q. And what did he say?

15 A. He said he was not going to let us sell on that  
16 Friday, April 8th, and that Saturday, April 9th, because  
17 he did not have enough notice or words to that effect.

18 Q. Had you given Aramark notice of Kosher Sports' intent  
19 to operate on Fridays and Saturdays?

20 A. Yes.

21 Q. How?

22 A. I believe it was by e-mail. You sent -- my attorney  
23 sent a letter to Scott Kleckner via e-mail and via fax.

24 Q. Let me show you Exhibit 31. Do you recognize it?

25 A. Yes.

Mr. Katz - Direct - Mr. Tokayer

1 Q. How do you recognize it?

2 A. I reviewed it prior to being sent.

3 Q. And what is it?

4 A. It is a letter from my attorney to Scott Kleckner  
5 dated August 27th, 2010. And in it, it says that we will  
6 be taking all necessary steps to arrange for the sale of  
7 products at Citi Field on Friday nights and Saturdays.

8 MR. TOKAYER: I'd like to move Exhibit 31 into  
9 evidence, Your Honor.

10 THE COURT: Received.

11 (Plaintiff's Exhibit No. 31 received into evidence)

12 Q. Did Mr. Kleckner object to Exhibit 31?

13 A. No.

14 MR. MEHLMAN: Objection.

15 THE COURT: Sustained.

16 Q. What did Mr. Kleckner say if anything in response to  
17 Exhibit 31?

18 A. He --

19 MR. MEHLMAN: Objection.

20 THE COURT: What did he say when and to whom.  
21 Why don't you be more specific.

22 Q. What did Mr. Kleckner say if anything to any  
23 representative of Kosher Sports on August 27th of shortly  
24 thereafter in response to Exhibit 31?

25 THE COURT: Did Mr. Kleckner say anything to

Mr. Katz - Direct - Mr. Tokayer

1 you in response to the letter of August 27th, 2010?

2 THE WITNESS: He sent me an e-mail cc'ing -- he  
3 actually cc'd me, and the e-mail was actually sent to my  
4 attorney with my cc on it.

5 Q. Is Exhibit 32 that e-mail?

6 A. Yes.

7 MR. TOKAYER: I'd like to move Exhibit 32 into  
8 evidence.

9 THE COURT: Received.

10 (Plaintiff's Exhibit No. 32 received into evidence)

11 Q. In the April 6th, 2011 conversation between you and  
12 Mr. Kleckner, which you testified, what did Mr. Kleckner  
13 say if anything about other Fridays and Saturdays?

14 A. That he was not saying no to other Fridays or other  
15 Saturdays.

16 Q. Does Kosher Sports have any other venues where  
17 Aramark is the concession manager?

18 A. Yes.

19 Q. Where?

20 A. Lincoln Financial Field and M&T Bank Stadium.

21 Q. How long have you been operating in Lincoln Financial  
22 Field?

23 A. Since 2004.

24 Q. How long have you been operating at M&T Bank in  
25 Baltimore?

Mr. Katz - Direct - Mr. Tokayer

1 A. Since 2005.

2 Q. Were Tom Funk and Scott Kleckner of Aramark at  
3 Lincoln Financial Field during the period that Kosher  
4 Sports was operating there?

5 MR. MEHLMAN: Objection.

6 THE COURT: I'm getting a little confused now,  
7 so can you break this down?

8 MR. TOKAYER: Yes.

9 THE COURT: Were they at -- were they  
10 physically at the field or --

11 Q. Were they -- did Tom Funk and Scott Kleckner work for  
12 Aramark at Lincoln Financial Field when Kosher Sports  
13 operated there?

14 A. Yes.

15 Q. Okay. And then they came to Citi Field sometime  
16 later, correct?

17 A. That is correct.

18 Q. Has Aramark requested Kosher Sports sell kosher  
19 products at Lincoln Financial Field on Fridays and  
20 Saturdays?

21 A. Yes.

22 Q. While Mr. Funk and Mr. Kleckner were stationed there  
23 by Aramark?

24 MR. MEHLMAN: Objection. If Mr. Tokayer wants  
25 to testify, we can allow him to testify. I can call him

Mr. Katz - Direct - Mr. Tokayer

1 as a witness.

2 THE COURT: Yes. Again --

3 MR. MEHLMAN: This is inappropriate.

4 THE COURT: I don't know how many times I have  
5 to tell you not to do this, and when I do tell you,  
6 you've already signaled to the witness what his testimony  
7 should be. So stop it and stop it now.

8 MR. TOKAYER: Yes, Your Honor.

9 Q. You testified that Aramark requested that Kosher  
10 Sports sell kosher products at Lincoln Financial Field on  
11 Fridays and Saturdays. Who were the Aramark individuals  
12 that were stationed at Lincoln Financial Field at that  
13 time?

14 A. Tom Funk and Scott Kleckner.

15 Q. Did either Mr. Funk or Mr. Kleckner raise any  
16 credibility or integrity concerns with your operating at  
17 Financial -- on Fridays and Saturdays at Lincoln  
18 Financial Field?

19 A. No.

20 Q. And Aramark also -- with respect to M&T Bank Field,  
21 has Kosher Sports sold there on Fridays and Saturdays?

22 A. Yes.

23 Q. Has Aramark made a request of Kosher Sports in that  
24 regard?

25 A. Yes, they have.

Mr. Katz - Direct - Mr. Tokayer

1 Q. What is the most recent time that you received a  
2 request from Aramark to operate at M&T Bank Stadium on  
3 Fridays and Saturdays?

4 A. The last event that they asked us to be open on  
5 Fridays and Saturdays was Memorial Day weekend 2011, so  
6 about a month ago.

7 Q. How did Aramark communicate that request to you?

8 A. Via e-mail.

9 Q. I'm going to show you Exhibit 43. Do you recognize  
10 it?

11 A. Yes.

12 Q. How do you recognize it?

13 A. It's an e-mail I received on April 15th, 2011 from  
14 Aramark at M&T Bank Stadium.

15 MR. TOKAYER: I'd like to move Exhibit 43 into  
16 evidence.

17 THE COURT: Any objection?

18 MR. MEHLMAN: No, Your Honor, other than the  
19 relevance situation.

20 THE COURT: Received.

21 (Plaintiff's Exhibit No. 43 received into evidence)

22 Q. Mr. Katz, what if anything is the difference between  
23 Kosher Sports' relationship with Citi Field on the one  
24 hand and Lincoln Financial Field and M&T Bank Stadium in  
25 Baltimore on the other?



Mr. Katz - Direct - Mr. Tokayer

1 MR. MEHLMAN: Objection.

2 THE COURT: Sustained.

3 Q. And what is Kosher Sports' relationship to Lincoln  
4 Financial Field and M&T Bank Stadium?

5 MR. MEHLMAN: Objection.

6 THE COURT: I'm not sure what you mean by that.  
7 Can you --

8 Q. What is your arrangement --

9 THE COURT: Do you have a contractual  
10 relationship with respect to those other stadiums?

11 THE WITNESS: Yes, I do, but I only have the  
12 contract with Aramark at Lincoln Financial Field and M&T  
13 Bank Stadium.

14 Q. So you don't have a contract with the owner-operator  
15 ball club at those stadiums, correct?

16 A. That is correct.

17 Q. And how about at Citi Field?

18 A. At Citi Field I have a contract with QBC, the owner-  
19 operator of the ballpark, and Aramark.

20 Q. Are you familiar with the Mets A-to-Z Guide?

21 A. Yes.

22 Q. What is the A-to-Z Guide?

23 A. It is an informational guide that is published on the  
24 Mets website containing self-defining itself as any  
25 question or answer that a fan would want to know about

Mr. Katz - Direct - Mr. Tokayer

1 Citi Field.

2 Q. Have you had an opportunity to review the Mets 2010  
3 A-to-Z Guide?

4 A. Yes.

5 Q. What did the 2010 Mets A-to-Z Guide say about Kosher  
6 Sports?

7 A. It said where it was located, they mention menu  
8 items, and that's pretty much it.

9 Q. And did you have an opportunity to review the Mets A-  
10 to-Z Guide prior to the 2011 season?

11 A. Yes.

12 Q. When did you review that guide?

13 A. In March of 2011.

14 Q. And what did it provide about kosher foods?

15 A. It added some language that said kosher food only  
16 available Sundays through Thursdays.

17 Q. Let me show you Exhibit 45. Do you recognize it?

18 A. Yes.

19 Q. How do you recognize it?

20 A. I printed these out off the Mets website and made  
21 copies of it.

22 Q. What is it?

23 A. It's a copy of the Mets A-to-Z Guide for 2010 and  
24 2011.

25 MR. TOKAYER: I'd like to move Exhibit 45 into

Mr. Katz - Direct - Mr. Tokayer

1 evidence, Your Honor.

2 THE COURT: Received.

3 (Plaintiff's Exhibit No. 45 received into evidence)

4 Q. Leaving the A-to-Z Guide aside for a moment, let me  
5 ask you some questions about the 2011 Citi Field guest  
6 services handbook. Okay. Did you see the Mets 2011  
7 guest services handbook?

8 A. Yes.

9 Q. How did you see that?

10 A. That was given to me by Aramark.

11 Q. When?

12 A. In April of 2011.

13 Q. Why did you receive a copy of that from Aramark as  
14 you understood it at the time?

15 A. Every employee is required to carry it at Citi Field  
16 just in case a fan were to ask a question as to where  
17 something might be located.

18 Q. And can you tell the Magistrate Judge what the 2011  
19 Citi Field guest services handbook says about kosher  
20 foods?

21 A. It says that it's available on Sundays through  
22 Thursdays and that the kosher food is closed on Friday  
23 and Saturday.

24 Q. I direct your attention to Exhibit 46, Mr. Katz. Do  
25 you recognize it?

Mr. Katz - Direct - Mr. Tokayer

1 A. Yes.

2 Q. How do you recognize it?

3 A. It's a copy of the Citi Field guest service handbook  
4 that I received and copied.

5 MR. TOKAYER: I'd like to move Exhibit 46 into  
6 evidence.

7 THE COURT: Received.

8 (Plaintiff's Exhibit No. 46 received into evidence)

9 Q. Let me invite your attention to September of 2010,  
10 after the Court's August injunction. Did you on behalf  
11 of Kosher Sports make a request about -- to allow Kosher  
12 Sports to close a portable car flotation?

13 A. Yes.

14 Q. Which portable car flotation?

15 A. K-428, which is promenade level 428.

16 Q. And why did you make that request of Aramark to close  
17 K-428 at that time?

18 A. Attendance numbers for the -- for this particular  
19 series were very low, and we felt that it would be in our  
20 best interest to close the stand to prevent suffering  
21 losses to open it.

22 Q. And did Aramark respond to your request to close the  
23 stand for that period?

24 A. Yes, Tom Funk responded.

25 Q. What did he say?

Mr. Katz - Direct - Mr. Tokayer

1 A. He said no.

2 Q. At the time, did Mr. Funk tell you that he had  
3 consulted with the Mets before he said no?

4 MR. MEHLMAN: Objection.

5 THE COURT: Is it being offered for the truth?

6 MR. TOKAYER: Not at this point, Your Honor.

7 THE COURT: And Mr. Funk is a witness?

8 MR. TOKAYER: Yes.

9 THE COURT: All right. We'll hear from him.

10 Q. Did Kosher Sports in fact lose money by being forced  
11 to open K-428 Pittsburgh series in September 2010?

12 MR. MEHLMAN: Objection.

13 THE COURT: What's the relevance?

14 MR. TOKAYER: That this was conduct by QBC  
15 directing Aramark --

16 THE COURT: What's the relevance of whether he  
17 sustained a loss or not? We're not trying liability and  
18 damages now.

19 MR. TOKAYER: No, these are damages from --  
20 because these are damages from the -- which arise  
21 directly from the contempt of court.

22 THE COURT: Does this have anything to do with  
23 Fridays and Saturdays?

24 MR. TOKAYER: No. It has to do with the  
25 operation of Kosher Sports at that location and QBC and

Mr. Katz - Direct - Mr. Tokayer

1 Aramark's interfering with that.

2 THE COURT: I'm not going to allow it.

3 MR. TOKAYER: I would just proffer, Your Honor,  
4 that if given the opportunity we would prove that in fact  
5 Kosher Sports suffered losses due to that conduct. And  
6 with that, I have no further questions of the witness.

7 THE COURT: All right. Cross-examination?

8 MR. MEHLMAN: Yes, Your Honor. Can we take two  
9 minutes, Your Honor?

10 THE COURT: All right. Let's keep it to two.

11 MR. MEHLMAN: Okay. Thank you. I've got to  
12 wash my hands too.

13 THE COURT: TMI.

14 MR. MEHLMAN: My kids explained what that was.

15 THE WITNESS: Hand over the --

16 THE COURT: You may.

17 THE WITNESS: Thank you.

18 (Court recessed.)

19 THE COURT: Should we go back on the record  
20 now?

21 MR. MEHLMAN: Yes, Your Honor.

22 THE COURT: All right.

23 MR. MEHLMAN: May I cross-examine, Your Honor?

24 THE COURT: You may.

25 CROSS-EXAMINATION

Mr. Katz - Cross - Mr. Mehlman

1 BY MR. MEHLMAN:

2 Q. Mr. Katz, on January 6th of 2011, you had a  
3 conversation with Mr. Grey; isn't that correct?

4 A. Yes.

5 Q. And that conversation was taped by you; isn't that  
6 correct?

7 A. Yes.

8 Q. And that conversation was taped without Mr. Grey or  
9 Mr. Kleckner's knowledge; is that correct?

10 A. That's correct.

11 Q. And that was an operational meeting on January 6th,  
12 2011; is that correct?

13 A. Yes.

14 Q. And that's an operational meeting that you have  
15 before each season with Aramark; isn't that correct?

16 MR. TOKAYER: Objection.

17 THE COURT: I'll allow it.

18 THE WITNESS: Yes.

19 Q. And you had an operational meeting back in 2010;  
20 isn't that correct?

21 A. Yes.

22 Q. And that was also an operational meeting at the  
23 beginning of 2010 before the season started; is that  
24 correct?

25 A. That's correct.

Mr. Katz - Cross - Mr. Mehlman

1 Q. Similar to the operational meeting that you had in  
2 January of 2011, correct?

3 A. Yes.

4 Q. And you taped that meeting as well; is that correct?

5 A. That's correct.

6 Q. And the recording of the operational meeting in 2010,  
7 that's been destroyed by you; is that correct?

8 MR. TOKAYER: Objection.

9 THE COURT: I'll allow it.

10 THE WITNESS: I didn't destroy anything. I  
11 discarded it. So when you use the word destroy, you  
12 might have a different definition than I do, but I didn't  
13 destroy it.

14 Q. You just --

15 A. I discarded it.

16 Q. Do you have those tapes or the recordation of the  
17 January 2000 -- I'm sorry, the operational meeting from  
18 2010? Do you have those? Are those in existence?

19 A. Do I have the tapes?

20 Q. Yes.

21 A. Do I have the recorder? No.

22 Q. You discarded it; is that correct?

23 A. That's correct.

24 Q. It no longer exists; is that correct?

25 A. Correct.



Mr. Katz - Cross - Mr. Mehlman

1 Q. Now, during the operational meeting in 2011, besides  
2 operational issues you specifically raised your intent  
3 and your request to operate on Friday and Saturday with  
4 Mr. Grey; is that correct?

5 MR. TOKAYER: Objection.

6 THE COURT: Sustained. I'm sorry, overruled.

7 THE WITNESS: Can you repeat that question  
8 please?

9 Q. During the January 2011 operational meeting, you  
10 raised your intent to operate on Friday and Saturday with  
11 Mr. Grey and Mr. Kleckner; isn't that correct?

12 A. Mr. Grey brought up the installation of anchors at my  
13 locations, and then he said that they couldn't be put in  
14 there because they were moving the cart back and forth.  
15 So no, I didn't bring it up. He did.

16 Q. He brought in moving the carts back and forth, yet  
17 you raised specifically the issue and your intent and  
18 your desire to operate on Friday and Saturday, didn't  
19 you?

20 MR. TOKAYER: Objection.

21 THE COURT: What's the basis for the objection?

22 MR. TOKAYER: Those questions are cumulative.

23 THE COURT: Overruled.

24 THE WITNESS: Can you repeat that question  
25 again please?

Mr. Katz - Cross - Mr. Mehlman

1 Q. You raised your intent to open on Friday and Saturday  
2 at the January 2000 operational meeting; isn't that a  
3 fact, Mr. Katz?

4 MR. TOKAYER: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: Again, he brought up the anchors  
7 and said it didn't apply to me because they were moving  
8 the cart back and forth, and then I brought up Friday and  
9 Saturday.

10 Q. In fact, you brought up Friday and Saturday because  
11 you knew the conversation was being recorded and you  
12 wanted to gather evidence that you thought would assist  
13 you in this lawsuit; isn't that correct?

14 MR. TOKAYER: Objection, Your Honor. What is  
15 the relevance of this?

16 THE COURT: Overruled.

17 MR. TOKAYER: It's beyond the scope of the  
18 direct.

19 THE COURT: Overruled.

20 THE WITNESS: No, I wasn't gathering evidence.  
21 It came up because he brought it up.

22 Q. It came up because he brought the anchors, and in  
23 response to bringing up the anchors did you not ask Mr.  
24 Kleckner the following question.

25 Question, page 9 from the transcript that I provided,

Mr. Katz - Cross - Mr. Mehlman

1 this is you, Mr. Katz. Do you remember saying this? "Is  
2 it support? Is that because they're telling you that we  
3 don't want to open Fridays and Saturdays or you guys are  
4 just against it?"

5 Do you remember making that statement to Mr. Kleckner  
6 during the January 2011 meeting?

7 A. We said a lot of things. I don't think that you're  
8 talking about the entire context of that conversation.  
9 So I think it's a trick question and I can't really  
10 answer it without you giving me a better question to  
11 answer.

12 Q. Did you --

13 MR. MEHLMAN: I'm going to ask the witness to  
14 be ordered to answer the question whether he made that  
15 statement or not, Your Honor.

16 THE COURT: Put the question to him again.

17 Q. Did you during your conversation with Mr. Kleckner,  
18 the operational meeting, in January 2011 make the  
19 following statement to Mr. Kleckner: "Is it support? Is  
20 that because they're telling you that we don't want to  
21 open Fridays and Saturdays or you guys are just against  
22 it?"

23 MR. TOKAYER: Objection.

24 Q. Did you make that statement?

25 MR. TOKAYER: Objection on relevance ground.

Mr. Katz - Cross - Mr. Mehlman

1 THE COURT: Overruled.

2 THE WITNESS: I'm sure I did.

3 Q. And when you made that statement, when you said  
4 they're telling you, you're referring to QBC, the Mets,  
5 correct?

6 A. Correct.

7 Q. And when you went on in that statement and says we  
8 don't want it open Fridays and Saturdays or you guys are  
9 just against it, the you guys, you're referring to  
10 Aramark; isn't that correct?

11 A. Yes.

12 Q. And in fact, in response Mr. Kleckner did not say  
13 it's the Mets' position, did he?

14 A. He said -- let me back up a second. What happened  
15 with the Mets in the off season? They were trying to  
16 replace me and try to terminate me and put another vendor  
17 in my place. Okay. That's the conversation that you're  
18 referring to.

19 Q. Oh, no. The conversation I'm referring to is Mr.  
20 Kleckner immediately in response to Mister -- your  
21 statement said it's two different camps.

22 A. No.

23 Q. Did --

24 A. No. He didn't say that.

25 Q. He did not say -- excuse me. Excuse me. I'll ask

Mr. Katz - Cross - Mr. Mehlman

1 the question.

2 MR. MEHLMAN: Going to ask the Court to direct  
3 the witness --

4 THE COURT: Gentlemen, both of you --

5 MR. MEHLMAN: -- to answer the questions.

6 THE COURT: There's a question and then an  
7 answer, and we don't have you both talking at the same  
8 time. Please try and focus on the questions and limit  
9 your answers to the questions requested, put to you.  
10 Your lawyer has the opportunity for redirect after the  
11 cross-examination.

12 THE WITNESS: Sorry, Your Honor.

13 Q. Did Mr. Kleckner ever tell you the Mets told us you  
14 can't open on Friday and Saturday, that's why we can't  
15 allow you to open up on Friday and Saturday? Did Mr.  
16 Kleckner ever tell you that, Mr. Katz?

17 A. No.

18 Q. It's a yes or no. In fact, after you said or you  
19 guys are just against it, Mr. Kleckner went on right away  
20 in that same conversation a second after you made that  
21 statement to explain why Aramark was against you being  
22 open on Friday and Saturday; isn't that correct?

23 MR. TOKAYER: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: He was giving his opinion and

Mr. Katz - Cross - Mr. Mehlman

1 Scott Wiegert's opinion.

2 Q. And Mr. Kleckner holds what title at Aramark?

3 A. Resident district manager.

4 Q. Of Aramark. Is he the highest ranking individual at  
5 Aramark in January of 2011 when he made that statement at  
6 Citi Field?

7 A. To my understanding, yes.

8 Q. And what was Mr. Wiegert's title?

9 A. I'm not sure.

10 Q. Mr. Wiegert was a pretty high-ranking member as well  
11 of the Aramark team at Citi Field in that -- during that  
12 time period; isn't that correct?

13 A. I'm not sure if he took leave before that, but he's  
14 pretty high up there. Yeah.

15 Q. You weren't talking to an Aramark employee that was  
16 packing the frankfurters into a cart. You were talking  
17 to the high end and the upper management individuals;  
18 isn't that correct?

19 A. Yes.

20 Q. And in fact, what Mr. Kleckner said is, you know  
21 Scott Wiegert's school of thought, which is that he feels  
22 that the original contract didn't include Fridays and  
23 Saturdays. Didn't he say that to you, Mr. Katz?

24 A. Yes, he did say that.

25 Q. And then you said with the Aramark contract, and then

Mr. Katz - Cross - Mr. Mehlman

1 Mr. Kleckner responded yeah; is that correct?

2 A. Yes.

3 Q. And then he went on, Mr. Kleckner, and explained why  
4 in fact Aramark did not want you to operate on Fridays  
5 and Saturdays. And he said as far as his take is, if we  
6 were to do something Fridays and Saturdays it would be  
7 different terms than what exists now; is that correct?

8 A. Yes, that is what he said. That was his opinion.

9 Q. That's his opinion as the -- what was his title again  
10 at Aramark, I'm sorry?

11 A. Resident district manager.

12 Q. And when he said the terms, different terms than what  
13 exist now, he meant different terms referencing the  
14 Aramark contract; isn't that correct?

15 A. I don't know what he was referring to.

16 MR. MEHLMAN: Objection, Your Honor. I'm going  
17 to ask that Mr. Klein not shake his head and tip off the  
18 witness regarding his answers.

19 THE COURT: I wasn't focusing on Mr. Klein, and  
20 I will assume that he wasn't doing it. And no attorney  
21 should be coaching a witness through gestures or  
22 otherwise.

23 MR. MEHLMAN: Thank you, Your Honor.

24 Q. He was talking about the Aramark contract, wasn't he?

25 A. His opinion of the Aramark contract.

Mr. Katz - Cross - Mr. Mehlman

1 Q. His opinion as an Aramark -- as the highest ranking  
2 member of Aramark at Citi Field; is that correct?

3 A. He is the highest ranking Aramark employee at Citi  
4 Field.

5 THE COURT: Mr. Mehlman, that's about the third  
6 time you've said that. Can we just move on and not go  
7 over the same ground?

8 MR. MEHLMAN: Yes, Your Honor.

9 Q. And in fact, Mr. Kleckner went on and said that's  
10 Scott's take on as far as commission structure, correct?

11 A. Something to that effect, yes.

12 Q. And the commission structure is referencing the  
13 commission structure between your company, KSI, and  
14 Aramark; isn't that correct?

15 A. Yes.

16 Q. And then Mr. Kleckner goes on and says my take is I  
17 think it hurts your credibility and your reputation  
18 because you do everything right, you know, within the  
19 letter of the law, of the kosher law on the other days.  
20 I feel that there's simply no growth being kosher styles  
21 Sundays, not that you wouldn't do things right the other  
22 days, but I feel. He gave you his opinion regarding the  
23 fact that he felt that a kosher establishment should not  
24 be open on Friday to Saturdays as it would hurt the  
25 credibility of the company. Did Mr. Kleckner not tell



Mr. Katz - Cross - Mr. Mehlman

1 that to you?

2 A. Yes. That was his --

3 MR. TOKAYER: Objection.

4 THE COURT: Sustained.

5 Q. Did Mister --

6 THE COURT: I'm sorry. Overruled.

7 THE WITNESS: Yes. That was his opinion at the  
8 time.

9 Q. Now, during the January 2011 meeting with Mr.  
10 Kleckner, you raised the Friday night and Saturday issue  
11 to see if in fact Aramark would permit you to operate on  
12 Friday and Saturday; isn't that correct?

13 A. No. First of all, the meeting with Mr. Grey and Mr.  
14 Kleckner walked in. But we've been through this already  
15 on my deposition so you already know the answers to these  
16 questions.

17 MR. MEHLMAN: Your Honor, I'm going to ask the  
18 witness to answer the question. I believe that's an  
19 inappropriate response, Your Honor.

20 THE COURT: It's an inappropriate response.  
21 Please answer the questions put to you unless the  
22 objection is sustained.

23 THE WITNESS: Okay. Will you please ask me  
24 that question again?

25 Q. Mr. Katz, isn't it a fact that during the January

Mr. Katz - Cross - Mr. Mehlman

1 2011 meeting you discussed with Mr. Kleckner that you  
2 wanted to be open on Friday and Saturday; isn't that  
3 correct?

4 A. I didn't ask him to open on Fridays and Saturdays,  
5 no.

6 Q. Did you discussed your intent to open on Fridays and  
7 Saturdays?

8 A. We discussed Fridays and Saturdays. I don't know if  
9 we discussed my intent, but he knew my intent back in  
10 August.

11 Q. And in fact, he responded that Aramark was not going  
12 to permit you to open up on Friday and Saturday, didn't  
13 he?

14 MR. TOKAYER: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: No, I don't think he said that.

17 MR. MEHLMAN: Your Honor, I'm going to ask that  
18 the transcript of the January 6, 2011 conversations that  
19 were taped by Mr. Katz be moved into evidence in their  
20 entirety as Exhibit C for impeachment purposes to allow  
21 the Court to review that transcript to decide the  
22 credibility of Mr. Katz's responses here today.

23 THE COURT: And that was pre-marked as an  
24 exhibit?

25 MR. MEHLMAN: That's correct, Exhibit C.

Mr. Katz - Cross - Mr. Mehlman

1 MR. TOKAYER: I would object to that, Your  
2 Honor.

3 THE COURT: On what ground?

4 MR. TOKAYER: Grounds that the transcript is  
5 not accurate and that the evidence is the tape that Mr.  
6 Mehlman has.

7 MR. MEHLMAN: Your Honor, we were before you  
8 but three weeks ago and, Your Honor, I offered to jointly  
9 come up with a transcript. Mr. Tokayer refused. He did  
10 not want to fund the preparation of the transcript. And  
11 I believe Your Honor instructed Mr. Tokayer at that time  
12 that if QBC did prepare a transcript the Court did not  
13 want to hear from Mr. Tokayer that that transcript was  
14 not accurate.

15 THE COURT: Well, I assume you're also offering  
16 the tape, correct?

17 MR. MEHLMAN: Absolutely, which the Court  
18 already has.

19 THE COURT: All right. I'll use the transcript  
20 as a guide. That's what fact finders do.

21 MR. MEHLMAN: Thank you, Your Honor.

22 BY MR. MEHLMAN:

23 Q. Now, this conversation was in January of 2011; is  
24 that correct?

25 A. Yes.

Mr. Katz - Cross - Mr. Mehlman

1 Q. And you saved that recording. You didn't discard  
2 that recording, did you?

3 A. No, I did not discard it.

4 Q. And in preparation for responses to certain discovery  
5 demands and interrogatories, you reviewed preparations  
6 made by your attorney and responses to certain demands;  
7 is that correct in this case? Is that correct?

8 A. I don't understand your question.

9 Q. Did you review certain responses to discovery demands  
10 that your attorney prepared with regard to this lawsuit?

11 MR. TOKAYER: Objection.

12 THE COURT: You want to make a proffer on this?

13 MR. MEHLMAN: Your Honor, I could make it easy.  
14 Defendant's Exhibit A -- I could make a proffer but I  
15 would rather make a proffer not with the witness sitting  
16 nearby if the Court would like me to make a proffer.

17 THE COURT: Just tell me where this is going.

18 MR. MEHLMAN: I believe that Mr. Katz's  
19 verification to his responses to the objections and  
20 interrogatories are inaccurate and untrue.

21 THE COURT: So you're offering this on  
22 credibility?

23 MR. MEHLMAN: Absolutely.

24 THE COURT: I'll allow it.

25 MR. MEHLMAN: May I ask the witness be shown

Mr. Katz - Cross - Mr. Mehlman

1 what has been marked Defendant's Exhibit A? May I  
2 approach the witness, Your Honor?

3 THE COURT: You may.

4 BY MR. MEHLMAN:

5 Q. I'm going to ask you to look at the last page of that  
6 exhibit. Is that your signature on the last page of this  
7 exhibit?

8 A. Yes.

9 Q. And does that last page indicate that you reviewed  
10 these responses and you verified the truth to your  
11 knowledge?

12 A. Yes.

13 Q. And did you sign that?

14 A. Yes.

15 Q. And was it notarized by your attorney?

16 A. Yes.

17 Q. And did you sign that on January 14, 2011?

18 A. Yes.

19 MR. MEHLMAN: Your Honor, I'd like to offer  
20 Defendant's Exhibit A into evidence at this time because  
21 I'm going to ask the witness some questions regarding his  
22 responses.

23 THE COURT: Subject to connection, it will be  
24 received.

25 (Defendant's Exhibit No. A received into evidence)

Mr. Katz - Cross - Mr. Mehlman

1 Q. Mr. Katz, prior to you signing the verification in  
2 which you verified the truth of these responses, did you  
3 review the responses?

4 A. Yes.

5 Q. And did you review the responses to make sure that  
6 they were accurate?

7 A. To the best of my knowledge, yes.

8 Q. And you understood by signing the verification you  
9 were in fact verifying that the responses were truthful  
10 and accurate; isn't that correct?

11 A. Yes.

12 Q. I'd ask you to look specifically at your response to  
13 interrogatory number 5, which is on page 4. Do you have  
14 that in front of you, Mr. Katz?

15 A. Yes.

16 Q. Number 5 request the following:

17 "Describe chronologically and in all detail  
18 each fact, agreement, occurrence, event,  
19 communication, meeting, discussion, documents and  
20 tangible things concerning KSI's request of Aramark  
21 operation as to whether KSI can operate on Friday  
22 nights and Saturdays during the Jewish Sabbath,  
23 including but not limited to Aramark's corporations  
24 response."

25 Do you see that request?

Mr. Katz - Cross - Mr. Mehlman

1 A. Yes.

2 Q. And this verification and this response was prepared  
3 January 14th; is that correct?

4 A. Yes.

5 Q. That would have been a little bit more than a week  
6 after your January 6th, 2011 discussion with Mr. Grey and  
7 Mr. Kleckner; is that correct?

8 A. That's correct.

9 Q. Is it fair to say that you -- that the conversation  
10 between Mr. Grey and Mr. Kleckner itself on January 6,  
11 2011 was pretty fresh in your mind, wasn't it?

12 A. I can't say that for sure.

13 Q. You remember that you had a conversation with them,  
14 didn't you?

15 A. Yes.

16 Q. You remember that during the course of the  
17 conversation you discussed your intent to operate on  
18 Friday night and Saturday; isn't that correct?

19 A. We had a conversation about Friday and Saturday.

20 Q. And you remember a week later that Mr. Kleckner  
21 responded and stated that if you're going to operate on  
22 Friday night and Saturday the terms of the agreement  
23 would have to change. Do you remember that at the time?

24 A. This interrogatory is talking about a request.

25 MR. MEHLMAN: Your Honor, I'm going to ask the

Mr. Katz - Cross - Mr. Mehlman

1 witness to be directed to answer the question. The  
2 question calls for a yes or no answer.

3 THE COURT: Yes. The question now is about  
4 your recollection. It's not about a response.

5 THE WITNESS: Okay.

6 THE COURT: So please answer the question put  
7 to you.

8 THE WITNESS: Can you please repeat the  
9 question?

10 Q. January 14th, 2011, as you verified the truth of your  
11 responses, you knew that on January 6th, 2011 Mr.  
12 Kleckner told you that Mr. Wiegert would not allow you to  
13 operate on Friday nights and Saturdays or the terms of  
14 your deal would have to change, and Mr. Kleckner  
15 discussed the credible issues with you operating on  
16 Friday night and Saturday; is that correct?

17 MR. TOKAYER: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: No, that's not what happened. He  
20 gave Mr. Wiegert's opinion and he gave Mr. Kleckner's  
21 opinion. At no time did he tell me no definitively.

22 Q. So he --

23 A. I didn't ask him.

24 Q. He gave -- in your mind, Mr. Kleckner and Mister --  
25 Mr. Kleckner gave Mr. Wiegert's opinion and his opinion;



Mr. Katz - Cross - Mr. Mehlman

1 is that correct?

2 A. That's correct.

3 Q. And that opinion was about you operating on Friday  
4 night and Saturday; isn't that correct?

5 A. It was his opinion, yes.

6 Q. About you operating on Friday night and Saturday,  
7 correct?

8 A. Yes, his opinion.

9 Q. And their opinion, did you forget their opinion on  
10 January 14th while you were drafting these responses?

11 A. No.

12 Q. So you had in your mind, you remembered the  
13 conversation referencing their opinions; is that correct?

14 A. Yes.

15 Q. And you knew that when you were responding to the  
16 discovery demands; isn't that correct?

17 MR. TOKAYER: Objection.

18 THE COURT: Sustained as to form.

19 Q. In your discovery response, specifically to 5 or  
20 anyone else -- anywhere else in your discovery responses,  
21 did you in any way detail your conversation between Mr.  
22 Kleckner, Mr. Grey and yourself on January 6th, 2011, yes  
23 or no?

24 MR. TOKAYER: Objection.

25 THE COURT: Overruled.

Mr. Katz - Cross - Mr. Mehlman

1 THE WITNESS: No, I did not.

2 Q. And the reason that you didn't is because you did not  
3 want to reveal the fact that you had these secretly taped  
4 conversations; isn't that correct?

5 MR. TOKAYER: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: No, that is not true.

8 Q. Yet your response to number 5 was none; is that  
9 correct?

10 A. Correct.

11 MR. TOKAYER: Objection.

12 Q. And when you responded none in number 5, you in your  
13 mind did not forget about the January 6, 2011  
14 conversation; is that correct, yes or no?

15 A. Can you repeat that question?

16 Q. When you responded none you did not forget the  
17 January 6, 2011 conversation between yourself, Mr.  
18 Kleckner and Mr. Grey; is that correct?

19 A. I knew we had a conversation.

20 Q. And you knew the contents of the conversation, didn't  
21 you?

22 MR. TOKAYER: Objection.

23 Q. Yes or no.

24 THE COURT: Overruled.

25 THE WITNESS: Parts of it, yes.

Mr. Katz - Cross - Mr. Mehlman

1 Q. Parts about Friday night and Saturday, correct?

2 MR. TOKAYER: Objection.

3 THE COURT: Overruled, but let's move on.

4 Would you answer the question?

5 THE WITNESS: I remember parts of that  
6 conversation, yes.

7 Q. Now, on April 15th you sought --

8 THE COURT: Are we talking about 2011?

9 MR. MEHLMAN: I apologize, Your Honor.

10 Q. April 15th, 2011, you signed a declaration. I'm  
11 going to with the Court's permission -- it's been marked  
12 Defendant's Exhibit B -- show it to the witness.

13 MR. MEHLMAN: May I approach, Your Honor?

14 THE COURT: You may.

15 Q. Did you sign this declaration?

16 A. Yes, I did.

17 Q. And did you sign this declaration in preparation of  
18 your attorneys' motion for contempt, the hearing that  
19 we're holding here today?

20 A. Yes, I did.

21 Q. And did you review it before you signed it?

22 A. Yes.

23 Q. And is it truthful and accurate?

24 A. Yes.

25 Q. And you signed it or it was not signed, I apologize,

Mr. Katz - Cross - Mr. Mehlman

1 it was authorized for your signature on April 15th, 2011;  
2 is that correct?

3 A. That's correct.

4 MR. MEHLMAN: I'm going to offer Defense  
5 Exhibit B into evidence at this time, Your Honor.

6 THE COURT: Any objection?

7 MR. TOKAYER: No objection, Your Honor.

8 THE COURT: Received.

9 (Defendant's Exhibit B received into evidence)

10 Q. Now, this declaration was sworn out a few days after  
11 April 6, 2011 conversation, correct, between you and Mr.  
12 Kleckner over the phone?

13 A. That's correct.

14 Q. And that was another conversation that you taped; is  
15 that correct?

16 A. Yes.

17 Q. And during the course of that conversation, you  
18 intentionally taped that conversation in order to gather  
19 what you thought would be evidence that would be helpful  
20 during the course of this hearing and during the course  
21 of the lawsuit; isn't that correct?

22 MR. TOKAYER: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: I wanted to get his honest and  
25 forthcoming answer, and I wanted to memorialize his

Mr. Katz - Cross - Mr. Mehlman

1 answer.

2 Q. In hopes of gathering evidence that would be helpful  
3 for this lawsuit; isn't that correct?

4 A. That's not what I said.

5 Q. I'm going to ask if you remember giving a deposition  
6 just a few days ago on June 20th, 2011, page 413 through  
7 page 414. Do you remember giving this -- asking this  
8 question and giving this answer?

9 "Question: And you taped the conversations  
10 because you knew you may want to use it as evidence  
11 during the course of the lawsuit; isn't that correct?

12 "Answer: I wanted to know his position, I  
13 wanted to know his stance, and then I would discuss it  
14 afterwards with my attorneys if necessary.

15 "Question: Because there was a pending  
16 lawsuit, correct?

17 "Answer: Yes."

18 Do you remember giving those -- asked -- being asked  
19 those questions and giving those answers?

20 A. Yes.

21 Q. So the purpose of you going in there was to try to  
22 gather evidence, get statements from Mr. Kleckner, review  
23 them with your attorneys to see whether it would be  
24 helpful to you in the contempt proceeding or in the  
25 lawsuit in chief; isn't that correct?

Mr. Katz - Cross - Mr. Mehlman

1 MR. TOKAYER: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 Q. Were you telling the truth during your deposition or  
5 are you telling the truth now, Mr. Katz?

6 MR. TOKAYER: Objection.

7 THE COURT: Sustained.

8 Q. Now, prior to reviewing your declaration, Exhibit B,  
9 did you review the tapes or the recordings of the January  
10 6th, 2011 discussion that we discussed earlier and the  
11 April 6th, 2011 discussion?

12 A. When are you asking me if I reviewed them?

13 Q. Prior to you -- excuse me, during your review of the  
14 declaration or while you were preparing the declaration?

15 A. I reviewed pieces of it.

16 Q. And that would have been just about the same time  
17 that you were assisting in the preparation of the  
18 declaration, correct?

19 A. I can't say for certain when it was, but it was -- I  
20 definitely reviewed pieces of it.

21 Q. In connection with you --

22 THE COURT: I'm sorry, you say it. Are you  
23 referring to recordings of both conversations?

24 THE WITNESS: No. I think he's referring to  
25 the April 6th recording.

Mr. Katz - Cross - Mr. Mehlman

1 THE COURT: What about parts of the January  
2 recording?

3 THE WITNESS: With regards to this declaration?

4 THE COURT: With regards to your April 15th,  
5 2011 declaration, Defendant's Exhibit B?

6 THE WITNESS: I also reviewed pieces of that as  
7 well, yes.

8 Q. And this declaration was prepared in the middle of  
9 January -- middle of April, I apologize; is that correct?

10 A. Yes, that's correct.

11 Q. So it's fair to say that pieces of the conversations  
12 -- I assume the relevant ones, is that what you reviewed?

13 MR. TOKAYER: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: I reviewed pieces that I felt  
16 were relevant, yes.

17 Q. May 9th is approximately three weeks after the  
18 declaration was signed; is that fair to say?

19 A. Yes.

20 Q. And were those pieces of relevant review of the  
21 January 6th and April 6th conversation pretty fresh in  
22 your mind would you say?

23 A. They were in my mind. I wouldn't say they were  
24 fresh. I have a lot going on.

25 Q. They were in your mind, correct?

Mr. Katz - Cross - Mr. Mehlman

1 MR. TOKAYER: Objection.

2 THE COURT: Overruled.

3 Q. Yes or no.

4 A. I remembered having conversations but I wouldn't say  
5 that I remembered the substance completely about it.

6 Q. Is it fair to say that you remembered the fact that  
7 the Mets issue was discussed during those conversations?

8 MR. TOKAYER: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: What do you mean the Mets -- what  
11 do you mean by that?

12 Q. The Mets issue regarding you being open on Friday and  
13 Saturday, Mr. Katz.

14 A. It was discussed.

15 Q. And is it fair to say on May 9th, a couple of weeks  
16 after you reviewed these tapes, you knew that the Mets or  
17 QBC or issues relating to them were discussed in the  
18 January 6th and April 6th conversations?

19 A. I don't recall back then, no. I don't recall May  
20 9th.

21 Q. So January 5th, excuse me, April 15th, 2011, you  
22 review relevant snippets of these taped conversations; is  
23 that correct, yes or no?

24 A. That's not what I said. I said I reviewed it  
25 somewhere between April 6th and April 15th. I didn't say



Mr. Katz - Cross - Mr. Mehlman

1 April 15th.

2 Q. Around April 15th you reviewed relevant snippets of  
3 these conversations; is that correct?

4 A. Yes.

5 Q. And you reviewed them in connection with this  
6 declaration; isn't that correct?

7 A. Yes.

8 Q. In fact, the declaration references these two  
9 conversations in paragraph 2, doesn't it?

10 A. Yes.

11 Q. In fact, in paragraph 2 you wrote down:

12 "On or about January 6, 2011 and  
13 April 6th, 2011 Scott Kleckner, a  
14 representative of Aramark's Sports  
15 and Entertainment Services told me  
16 during the off season QBC sought to  
17 have KSI terminated and replaced at  
18 Citi Field with another vendor."

19 Did you make that statement in this declaration?

20 A. Yes.

21 Q. So when you made this declaration in April of 2011,  
22 April 15th of 2011, you knew that during the January 6th,  
23 2011 and April 6th, 2011 conversation QBC was raised; is  
24 that correct?

25 A. Yes.

Mr. Katz - Cross - Mr. Mehlman

1 Q. May 9th, three weeks later, did you forget whether  
2 QBC was raised during the January and April conversations  
3 that you had with Mr. Kleckner and Mr. Grey?

4 A. No, I don't think so.

5 Q. So you would remember May 9th that the April 6th  
6 conversation and the January 6th conversation you  
7 discussed QBC, correct?

8 A. We discussed QBC, yes.

9 Q. And you remembered that on May 9th; isn't that  
10 correct, when you were sitting for your deposition; isn't  
11 that correct?

12 A. I believe I did, yes.

13 Q. Do you remember being asked this question and giving  
14 these answers at your May 9th deposition, page 243?

15 "Question: Did Mr. Kleckner raise any issues  
16 that QBC had at that time with operating on Friday and  
17 Saturday?

18 "Answer: I don't recall.

19 "Question: Do you know if Mr. Kleckner even  
20 raised QBC during the conversation?

21 "Answer: I don't recall.

22 "Question: And do you know if Mr. Kleckner  
23 raised QBC or any issues that QBC at all during the  
24 January conversation?

25 "Answer: I don't recall."

Mr. Katz - Cross - Mr. Mehlman

1 Do you remember giving those answer -- being asked  
2 those questions and giving those answers?

3 A. Yes, I do.

4 Q. Do you remember being asked this question, page 221  
5 line 18?

6 "Question: Did you discuss operating on Friday  
7 nights and Saturdays at that meeting?

8 "Answer: I don't recall.

9 "Question: So you don't remember if you  
10 discussed operating on Friday nights and Saturday at that  
11 meeting; is that correct?

12 "Answer: I don't recall."

13 Do you remember being asked those questions and  
14 giving those answers?

15 MR. TOKAYER: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: Can you repeat that back?

18 Q. Do you remember being asked the following questions,  
19 page 221 of the May 9th deposition.

20 "Question: Did you discuss operating on Friday  
21 nights and Saturdays at the meeting?

22 "Answer: I don't recall."

23 Do you remember being asked that question and giving  
24 that answer?

25 A. If you have it on the transcript I guess it's how I

Mr. Katz - Cross - Mr. Mehlman

1 answered it.

2 Q. Question, page 221, line 1:

3 "Q So you don't remember if you  
4 discussed operating on Friday nights  
5 and Saturdays at that meeting; is  
6 that correct?

7 A I don't recall."

8 Do you remember giving that -- being asked that  
9 question and giving that answer?

10 A. I don't remember that, no.

11 MR. MEHLMAN: I'm going to ask that the counsel  
12 stipulate as to the accurate reading of the transcript.

13 MR. TOKAYER: I don't have the transcript with  
14 me unfortunately.

15 MR. MEHLMAN: They were provided for counsel on  
16 Friday, Your Honor.

17 THE COURT: Show Mr. Tokayer a copy.

18 MR. TOKAYER: I have it but it's small.

19 MR. MEHLMAN: Exhibit -- it's Defendant's  
20 Exhibit H, Your Honor, which I believe is admitted into  
21 evidence pursuant to the Court's earlier ruling as it is  
22 the deposition of Mr. Katz.

23 THE COURT: It is.

24 MR. MEHLMAN: Would you like me to show it to  
25 the witness, Your Honor, or counsel?

Mr. Katz - Cross - Mr. Mehlman

1 THE COURT: Show it to Mr. Tokayer.

2 MR. MEHLMAN: Reading from the transcript:

3 "Q So you don't remember if you  
4 discussed operating on Friday nights  
5 and Saturdays at that meeting; is  
6 that correct?"

7 "MR. TOKAYER: Object."

8 The witness says I don't recall.

9 Is there a stipulation that that is the accurate --

10 MR. TOKAYER: It's --

11 MR. MEHLMAN: -- response to that question?

12 MR. TOKAYER: Yes.

13 THE COURT: The question is read back on 20 --  
14 222 going over to 223, at which point Mr. Tokayer says  
15 you have my objection to that, right. And the  
16 questioning continues.

17 MR. TOKAYER: Yes.

18 THE COURT: All right. So I assume there is a  
19 stipulation with respect to accuracy.

20 MR. TOKAYER: Yes.

21 THE COURT: All right. Mr. Mehlman, you may  
22 proceed, and let's wrap up with this witness.

23 MR. MEHLMAN: Yes, Your Honor.

24 THE COURT: We have a number of other  
25 witnesses.

Mr. Katz - Cross - Mr. Mehlman

1 BY MR. MEHLMAN:

2 Q. And do you remember being asked during your  
3 deposition, Mr. Katz, page 231, going -- page 231 going  
4 to 233, Your Honor, it's probably 232:

5 "Okay. And do you know, if and I  
6 assume you don't remember, whether  
7 Aramark had a position regarding  
8 operating on Friday nights and  
9 Saturdays at the January meeting,  
10 correct? You don't remember what  
11 that position was or did you? Do you  
12 know what their position was?"

13 And you responded, "I don't recall;" is that correct?

14 MR. TOKAYER: Can I have a copy of that  
15 deposition as well? What page are you reading from? I'm  
16 sorry.

17 MR. MEHLMAN: Two hundred and thirty-two.

18 Q. Do you remember being asked that question and giving  
19 that answer, Mr. Katz?

20 MR. TOKAYER: Where did you read? I'm sorry.  
21 What did you read from?

22 MR. MEHLMAN: Line 11 page -- on page 233.

23 "Okay. And do you know if, and I  
24 assume you don't remember, whether  
25 Aramark had a position regarding

Mr. Katz - Cross - Mr. Mehlman

1 operating on Friday nights and  
2 Saturdays at the January meeting,  
3 correct? You don't remember what  
4 that position was or did you? Do you  
5 know what that position -- what their  
6 position was?"

7 Mr. Tokayer, you objected. The witness, line 21  
8 through line 22, "I don't recall."

9 MR. TOKAYER: Yes. I objected to that  
10 question. And --

11 MR. MEHLMAN: And did Mr. Katz respond I don't  
12 recall?

13 MR. TOKAYER: I would ask for a ruling on that  
14 objection.

15 THE COURT: The objection is overruled.  
16 BY MR. MEHLMAN:

17 Q. And Mr. Katz, you didn't --

18 THE COURT: I'm sorry. Did the witness respond  
19 to the --

20 MR. MEHLMAN: I'm sorry.

21 THE COURT: -- to the latest question?

22 Q. Do you remember giving that answer --

23 A. What question was that?

24 Q. -- to that question?

25 A. If that's what it says I said, then that's what I

Mr. Katz - Cross - Mr. Mehlman

1 said.

2 MR. MEHLMAN: I'm going to ask for a  
3 stipulation that the transcript is in fact accurate.

4 MR. TOKAYER: That's what the transcript says.

5 MR. MEHLMAN: Is that a stipulation, Your  
6 Honor, or are we going to ask for the transcript tapes to  
7 be reviewed by Mr. Tokayer?

8 THE COURT: Please, the document is in evidence  
9 and there isn't an objection to accuracy whether you get  
10 a formal stipulation or not.

11 MR. MEHLMAN: Thank you, Your Honor.

12 BY MR. MEHLMAN:

13 Q. Isn't a fact, Mr. Katz, that during the May 2011  
14 deposition where you gave those I don't recall responses  
15 you did remember the answers to those questions, didn't  
16 you?

17 MR. TOKAYER: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: I don't recall if I knew the  
20 answers then. I wouldn't lie under oath.

21 Q. And your intent at that deposition was to keep the  
22 secrecy of those January and April taped conversations;  
23 isn't that correct, Mr. Katz?

24 A. No.

25 MR. TOKAYER: Objection.



Mr. Katz - Cross - Mr. Mehlman

1 Q. Now, Mr. Katz, you testified earlier that you never,  
2 ever discussed operating on Friday and Saturday with  
3 Aramark until when?

4 A. I don't understand that question.

5 Q. You testified earlier during direct examination that  
6 you never requested to be open on Friday night and  
7 Saturday from Aramark until what date did you testify?

8 A. I did not request of Aramark to be open until April  
9 6th, 2011.

10 Q. Now, the Mets had told you back in 2008 that they  
11 weren't going to allow you to open on Friday night and  
12 Saturday; is that your testimony?

13 MR. TOKAYER: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: Can you repeat that question  
16 please?

17 Q. Is it your testimony on direct examination the Mets  
18 had told you as early as 2008 that they weren't going to,  
19 quote, allow you to operate on Friday night and Saturday;  
20 is that correct?

21 A. No, 2009.

22 Q. And 2009 was the first season; is that correct --

23 A. First --

24 Q. -- for Citi Field?

25 A. Yes.

Mr. Katz - Cross - Mr. Mehlman

1 Q. You did not -- your testimony here today is that you  
2 didn't approach Aramark during that entire 2009 season  
3 about operating on Friday night and Saturday; is that  
4 correct?

5 A. That's correct.

6 Q. And your testimony here today is that during the  
7 entire 2010 season you did not approach Aramark about  
8 operating on Friday night and Saturday; is that correct?

9 A. That's correct. I did not approach them at all.  
10 That's correct.

11 Q. Did you have any discussions with them at all?

12 A. Other than Tom Funk sending me that e-mail asking me  
13 who from the Mets approved it, no.

14 Q. Now, you entered into an agreement with Aramark; is  
15 that correct?

16 A. Yes.

17 Q. And that agreement, I believe you have the exhibit  
18 book is Exhibit Number --

19 MR. MEHLMAN: A moment, Your Honor.

20 Q. -- Number 7. Can you turn to that? Is that a copy  
21 of your agreement with Aramark that allows you to operate  
22 and sell your frankfurters and products, Mr. Katz?

23 A. Yes. This is my contract with Aramark at Citi Field.

24 Q. And did you execute that?

25 A. Yes, I did.

Mr. Katz - Cross - Mr. Mehlman

1 MR. MEHLMAN: Your Honor, I offer Exhibit 7  
2 into evidence at this time.

3 THE COURT: I assume there's no objection.

4 MR. TOKAYER: No objection.

5 THE COURT: Received.

6 (Plaintiff's Exhibit No. 7 received into evidence)

7 Q. If you could read Article 6 please out loud.

8 A. "The events at which the products will be sold shall  
9 be determined by Aramark in consultation with  
10 concessionaire. Concessionaire shall conduct its  
11 operations only during such hours as shall be specified  
12 by Aramark."

13 Q. So under the contract, it's fair to say that Aramark  
14 decided the events and the hours of operation; is that  
15 correct?

16 A. No. The events it says shall be determined by  
17 Aramark in consultation with concessionaire.

18 Q. Oh, so Aramark has to consult with the  
19 concessionaire, correct?

20 A. That is correct. However, in this instance where  
21 there's a sponsorship agreement with QBC in place --

22 Q. I didn't -- there's no question pending. I asked the  
23 question. You give your answer. If you have anything  
24 additional to say, I'm your attorney is more than  
25 qualified to ask you questions on redirect.

Mr. Katz - Cross - Mr. Mehlman

1 THE COURT: Again, any directions to the  
2 witness will come from the Court --

3 MR. MEHLMAN: I apologize, Your Honor.

4 THE COURT: -- and not from counsel.

5 Q. Yet, Article 6, which states concessionaire shall  
6 conduct its operations only during such hours as shall be  
7 specified by Aramark, that is in Article 6; is that  
8 correct?

9 A. Yes, it is.

10 Q. And you wanted to operate on Friday night and  
11 Saturday; isn't that correct?

12 A. I'm sorry?

13 Q. Did you want to operate on Friday night and Saturday?

14 A. Yes.

15 Q. In fact, there were voluminous e-mails and  
16 discussions with QBC about your intent, your need and  
17 your desire to operate on Friday night and Saturday; is  
18 that correct?

19 A. That's correct.

20 Q. Yet it's your testimony here today, knowing Article  
21 6, that you waited until two days before opening day  
22 2011, April 6th, 2011, to ask Aramark whether you could  
23 operate on Friday night and Saturday; is that correct?

24 A. Yes. I did not ask Aramark until April 6, 2011. QBC  
25 made that point very clear to me.

Mr. Katz - Cross - Mr. Mehlman

1 MR. MEHLMAN: Your Honor, there's no question  
2 pending. I ask that the end of that response be stricken  
3 for the record. And if I could have a moment.

4 THE COURT: I'll deny it.

5 MR. MEHLMAN: I'm sorry, Your Honor. I did  
6 have one question, just one short series of questions. I  
7 apologize.

8 Q. You discussed that there are other venues that you  
9 were open on Friday and Saturday where Aramark was the  
10 concessionaire; is that correct?

11 A. That is correct.

12 Q. And those were in two football stadiums, correct?

13 A. Correct.

14 Q. And the football season is how long?

15 A. Sixteen games over four months or so.

16 Q. And how many home games are there usually?

17 A. Ten home games plus a couple of special events.

18 Q. How many home games?

19 A. Ten.

20 Q. Ten home games in each of the two venues that you  
21 referenced earlier in your testimony?

22 A. Yes, ten in each venue plus special events.

23 Q. How many home baseball games are there?

24 A. Eighty-one.

25 Q. Now, you also testified, and I believe you referred

Mr. Katz - Cross - Mr. Mehlman

1 to Exhibit 43, that you were asked to operate on Memorial  
2 Day weekend, Saturday, Sunday and Monday, at an NCAA LAX  
3 weekend; is that correct?

4 A. That's correct.

5 Q. What kind of event was that?

6 A. Lacrosse, special event.

7 Q. And in that e-mail, Ms. Fenstermaker (ph) of Aramark  
8 specifically requested that you have your personnel  
9 available to man those stands; is that correct?

10 A. Yes.

11 Q. And in fact, you manned your own stadiums in the  
12 stadium -- in this stadium as well as the other stadium?

13 A. What do you mean by manned my own --

14 Q. Do you have your own employees?

15 A. I have my own employees but I use a nonprofit group  
16 to staff these stands.

17 Q. Okay. So you use your own employees. You don't use  
18 Aramark employees, correct?

19 A. That's correct.

20 Q. And in fact, Ms. Fenstermaker in the e-mail, quote,  
21 says:

22 "In the past we have brought down  
23 staff from Philadelphia to help run  
24 some stands and would like to avoid  
25 this if at all possible, so we are

Mr. Katz - Cross - Mr. Mehlman

1 keeping all our options open. If you  
2 think that you will have any extra  
3 staff who would be interested in  
4 picking up another location, please  
5 let me know and we could work out the  
6 details."

7 She said that to you, correct?

8 A. Yes, but this e-mail was sent to everybody not just  
9 me.

10 Q. It says Jonathan on top.

11 A. Yes. But the original e-mail will say to Brianne  
12 Fenstermaker, which will have all of her contacts in it  
13 as --

14 Q. Does any other --

15 A. -- well.

16 Q. Does any other concessionaire man their own stands, I  
17 apologize, have their employees but you?

18 A. I'm sorry?

19 Q. Does any other concessionaire at this location --

20 A. Concessionaire is Aramark.

21 Q. I'm sorry. Any other concessions at these -- this  
22 location have their own employees?

23 A. I have no idea. I'm sure they do.

24 Q. You have no idea but you're sure they do.

25 A. I'm sure that they have somebody there managing, at

Mr. Katz - Cross - Mr. Mehlman

1 least one.

2 Q. Right. How many do you have by the way?

3 A. I have one.

4 Q. You only have one.

5 A. Uh-huh.

6 Q. You have nobody else.

7 A. That's correct.

8 THE COURT: I'm sorry. You have one what,  
9 employee?

10 THE WITNESS: I have one employee and I use a  
11 nonprofit organization to staff the rest of the stand.

12 Q. And how many nonprofit employees do you use to staff  
13 the rest of the stands?

14 A. Six to eight depending on how busy we'll be.

15 Q. And those are employees that you're responsible for  
16 that you bring -- that you ensure are at the stadium,  
17 correct?

18 A. Yes. I coordinate it with the nonprofit group.

19 Q. They're not coming from Aramark, correct?

20 A. They are not Aramark employees.

21 Q. It's fair to say that the rest of the people  
22 operating and selling frankfurters, hotdogs and other  
23 goods at the stadium are Aramark employees, correct?

24 A. At this stadium?

25 Q. Yes.



Mr. Katz - Redirect - Mr. Tokayer

1 A. No.

2 THE COURT: What stadium are we talking about  
3 now? When you say this stadium, what stadium are you  
4 talking about?

5 THE WITNESS: M&T Bank Stadium, I'm sorry.

6 Q. Who are they employed by?

7 A. I don't know. You'd have to find out for yourself.  
8 I'm not sure.

9 Q. But you know they're not Aramark employees.

10 A. There are some Aramark employees but not all of them.  
11 You asked me if all of them were Aramark employees.

12 Q. Majority of them Aramark employees?

13 A. I have no idea.

14 Q. Thank you.

15 MR. MEHLMAN: I have nothing further.

16 THE COURT: All right. Redirect?

17 REDIRECT EXAMINATION

18 BY MR. TOKAYER:

19 Q. On April, I'm sorry, on January 6, 2011, did Mr. Grey  
20 tell you that he was waiting on the Mets for a decision  
21 or words to that effect?

22 A. Yes.

23 Q. And did Mr. Kleckner at any time during that meeting  
24 tell you that Aramark would not permit Kosher Sports to  
25 conduct Friday, Saturday sales?

Mr. Katz - Redirect - Mr. Tokayer

1 A. No.

2 Q. Did he tell you that on April 6, 2011?

3 A. He told me that I could not sell at that Friday and  
4 that Saturday because he did not have enough notice.

5 Q. And what did he say with respect to other Friday and  
6 Saturday sales?

7 A. He said he was not saying no to other Friday,  
8 Saturday sales.

9 Q. And that's as late as April 6, 2011, correct?

10 A. Yes.

11 Q. Why didn't you ask Aramark prior to April 6? Why  
12 didn't you make a request to Aramark to sell on Fridays  
13 and Saturdays?

14 A. Because it was QBC's decision and QBC had said no to  
15 me in '09 and in '10.

16 Q. And were you aware in April of 2011 of the Judge's  
17 injunction prohibiting QBC from stopping you themselves?

18 A. Yes.

19 Q. You were asked a couple of questions about the April  
20 -- the May 9th, 2011 deposition. Do you specifically  
21 recall sitting here today what you remembered at that  
22 time?

23 A. No.

24 MR. TOKAYER: No further questions, Your Honor.

25 MR. MEHLMAN: Just one question, Your Honor.

Mr. Katz - Recross - Mr. Mehlman

1 RECROSS-EXAMINATION

2 BY MR. MEHLMAN:

3 Q. Mr. Katz, the injunction was issued in August 2010;  
4 is that correct?

5 A. Yes.

6 Q. Not April of 2011; is that correct?

7 A. That's correct.

8 Q. Thank you.

9 MR. MEHLMAN: Nothing further.

10 THE COURT: All right. You may step down.

11 We'll take a five-minute break.

12 MR. MEHLMAN: Your Honor, I was hoping to make  
13 the record clear that the transcript and the tape that's  
14 being offered by the defendant is for impeachment  
15 purposes only, and that's why it's being offered so the  
16 Court can accurately assess the credibility of the  
17 witness and the credibility of the witness's answers.

18 THE COURT: All right. We'll take a five-  
19 minute break.

20 (Court recessed.)

21 THE CLERK: Back on.

22 MR. TOKAYER: Kosher Sports calls Mike Landeen.

23 (Witness takes the stand)

24 MR. CLERK: If you could state your full name  
25 and then spell your last name?

Mr. Landeen - Direct - Mr. Tokayer

1 MR. LANDEEN: Michael Landeen, L-a-n-d-e-e-n.

2 THE CLERK: Thank you. And you can take your  
3 seat.

4 THE COURT: Counsel may proceed.

5 MR. TOKAYER: Thank you, your Honor.

6 M I C H A E L L A N D E E N

7 having been first duly sworn, was examined and  
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. TOKAYER:

11 Q. Good morning, Mr. Landeen.

12 A. Good morning. Oh, sorry.

13 Q. Are you ready to proceed?

14 A. Yes.

15 Q. Mr. Landeen, you're employed by QBC, correct?

16 A. Correct.

17 Q. Before you took a job with the Mets you used to work  
18 for Aramark, right?

19 A. Correct.

20 Q. At Shea Stadium?

21 A. Correct.

22 Q. And you were the director of concessions there for  
23 two years?

24 A. That is correct.

25 Q. Then you came over and started working with the Mets,

Mr. Landeen - Direct - Mr. Tokayer

1 right?

2 A. Correct.

3 Q. You are the vice president of venue services?

4 A. Correct.

5 Q. And you have been the vice president of venue  
6 services since April 2007, correct?

7 A. Yes.

8 Q. And you are an officer of QBC, the defendant in this  
9 action?

10 A. Yes.

11 Q. Aramark is QBC's concessionaire at Citi Field,  
12 correct?

13 A. Yes, they are.

14 Q. And as Aramark performs its duties as the  
15 concessionaire at Citi Field is it also their duty to  
16 take into account what the Mets want?

17 MR. MEHLMAN: Objection.

18 THE COURT: Sustained.

19 Q. Do you recall being asked the following question and  
20 giving the following response at your deposition in this  
21 case, and I'm referring to page 143 line 24.

22 MR. MEHLMAN: Objection, Your Honor.

23 Q. "Question: Did you understand --

24 THE COURT: I haven't even seen it. Let me  
25 hear the question.

Mr. Landeen - Direct - Mr. Tokayer

1 Q. "Question: Did you understand it to be Aramark's  
2 duty to take your feeling, Mr. Landeen's feelings, on  
3 customer service into account in exercising their  
4 judgment, meaning Aramark's?

5 "Answer: Yes."

6 MR. MEHLMAN: Objection.

7 Q. Do you recall being asked that question --

8 THE COURT: Same --

9 Q. -- and giving that answer?

10 THE COURT: Same objection. I already ruled on  
11 this.

12 Q. Can you direct your attention if I would to the  
13 binder in front of you, Exhibit 5? It's an e-mail from  
14 you, Mr. Landeen, to Mr. Katz. You authored that e-mail?

15 A. Yes.

16 MR. TOKAYER: I'd like to move Exhibit 5 into  
17 evidence, Your Honor.

18 MR. MEHLMAN: Objection.

19 THE COURT: On what grounds?

20 MR. MEHLMAN: The e-mail is from May 2nd, 2008,  
21 Your Honor.

22 THE COURT: I'll allow it consistent with my  
23 rulings regarding the other e-mails from that period of  
24 time.

25 (Plaintiff's Exhibit No. 5 received in evidence)

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Have you ever seen the Aramark/Kosher Sports  
2 agreement?

3 A. Yes.

4 Q. And in fact, in May of 2008 didn't you, Mr. Landeen,  
5 direct Aramark to prepare it?

6 MR. MEHLMAN: Objection.

7 THE COURT: I'm sorry. Can you repeat the two  
8 questions?

9 MR. TOKAYER: Okay.

10 THE COURT: Which -- I'm a little behind here.  
11 Which agreement are you talking about here?

12 MR. TOKAYER: The Aramark/Kosher Sports  
13 agreement, he said he reviewed it. And I asked him that  
14 didn't he in fact direct Aramark to prepare it.

15 THE COURT: Overruled.

16 THE WITNESS: I wouldn't say I directed them  
17 but I would say that I -- again, as I have stated, I was  
18 the liaison so I was helping both parties work together  
19 to come to an agreement. But actually making them come  
20 to an agreement, I wouldn't say that was the case.

21 Q. My question was whether or not you asked Aramark to  
22 draw up the Kosher Sports/Aramark agreement.

23 A. I did not ask them to draw it up.

24 Q. Okay. Let me -- do you remember taking a deposition  
25 in that case -- this case?

Mr. Landeen - Direct - Mr. Tokayer

1 A. Yes.

2 Q. The deposition was taken at my office, correct?

3 A. Yes.

4 Q. And you were accompanied by your attorneys, Mr.

5 Mehlman and Mr. Denniston?

6 A. Yes.

7 Q. And you knew you were going to be asked questions  
8 about this case?

9 A. Yes.

10 Q. And in fact, you prepared for that deposition, did  
11 you not?

12 A. Yes.

13 Q. And you prepared by conferring with your counsel as  
14 well as reviewing documents?

15 A. Some documents, yes.

16 Q. And before you answered the questions, you raised  
17 your right hand and swore to tell the truth?

18 A. I did.

19 Q. And that's the same oath you took today?

20 THE COURT: There's no jury here. Let's just  
21 get to the point.

22 Q. At the deposition, Mr. Landeen, were you asked the  
23 following question and give the following response, page  
24 144 line 21:

25 "Question: Does this e-mail refresh your



Mr. Landeen - Direct - Mr. Tokayer

1 recollection that on May 21st, 2008 you asked Aramark to  
2 draw up the Kosher Sports agreement?

3 "Answer: Yes."

4 Were you asked that question and did you give that  
5 response?

6 A. Apparently I was, but I don't recall it being that  
7 way but again, going off of my recollection right now.

8 Q. And in fact, before any subcontractor enters into an  
9 agreement with Aramark, isn't it true that they have to  
10 have an agreement with the Mets?

11 A. No, that's not the case.

12 Q. Do you remember at your deposition being asked the  
13 following question and giving the following response,  
14 page 116, line 7:

15 "Q Why do the sales people have to  
16 funnel the information to Aramark?  
17 Why can't the vendor and Aramark deal  
18 directly on these kinds of Aramark  
19 concerns and questions?"

20 Line 15:

21 "A Because they have to reach an  
22 advertising agreement with us first,  
23 and then they have the ability to go  
24 into an agreement with Aramark."

25 Do you remember being asked that question and giving

Mr. Landeen - Direct - Mr. Tokayer

1 that response?

2 MR. MEHLMAN: Well, there's a --

3 THE WITNESS: There --

4 MR. MEHLMAN: There was a further response that  
5 Mr. Tokayer --

6 THE COURT: And that's what cross-examination  
7 is for.

8 MR. MEHLMAN: Your Honor, just I think the  
9 answer has to be accurately reflected.

10 THE COURT: Let me take a look at the  
11 transcript.

12 I'm sorry. Your argument is that it --

13 MR. MEHLMAN: He didn't read the last line.

14 THE COURT: -- goes on where?

15 MR. MEHLMAN: He didn't read the last line of  
16 the answer. "It's not going to permit Aramark --

17 THE COURT: It's pretty --

18 MR. MEHLMAN: -- it's pretty status quo on all  
19 of our agreements." That's an important part to the  
20 answer, Your Honor.

21 THE COURT: All right. That will be included  
22 in the question put to the witness.

23 Q. Were you asked that question and did you give that  
24 response?

25 A. I was asked that question, and the response that I

Mr. Landeen - Direct - Mr. Tokayer

1 gave was in most cases we have an advertising agreement.  
2 But as we sit here today and as we have in the past,  
3 there are agreements that Aramark has that there are not  
4 advertising agreements. It depends on the category.  
5 There are a lot of factors that go into it.

6 Q. So that answer was not completely accurate that you  
7 gave at your deposition. Is that what you're saying?

8 MR. MEHLMAN: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: I can't recall the actual answer,  
11 but that's what it is. That's what I remember.

12 Q. Are you familiar with the usage agreement between  
13 Aramark and QBC?

14 A. Yes.

15 Q. Have you read it?

16 A. I know bits and pieces of it. I can't say I know it  
17 entirely. It's a very large agreement.

18 Q. Have you read it in its entirety?

19 A. No.

20 Q. Do you remember being asked the following question  
21 and giving the following response, page 25, line 14:

22 "Question: Are you familiar with the usage  
23 agreement between Aramark and Kosher Sports?

24 "Answer: Yes.

25 "Question: You've read that?

Mr. Landeen - Direct - Mr. Tokayer

1 "Answer: Yes."

2 Did you give that answer to those questions?

3 A. Apparently I did.

4 Q. And is that usage agreement available to you during  
5 the ordinary course of your duties?

6 A. Yes.

7 MR. MEHLMAN: Objection, Your Honor.

8 THE COURT: What ground?

9 MR. MEHLMAN: He's impeaching his own witness,  
10 Your Honor. I mean, he's -- it's kind of -- if he's  
11 looking for Mr. Landeen to be a credible witness  
12 regarding issues, he's impeaching his own witness.

13 THE COURT: I think it's fair to say that as a  
14 representative of QBC he's a hostile witness.

15 MR. MEHLMAN: Okay.

16 THE COURT: Objection overruled.

17 Q. Do you understand, Mr. Landeen, that the usage  
18 agreement governs the relationship between Aramark and  
19 QBC respecting concession services at Citi Field?

20 A. Yes.

21 MR. MEHLMAN: Objection, Your Honor. Are you  
22 going to allow him to lead as well?

23 THE COURT: He's a hostile witness, yes.

24 MR. TOKAYER: I have a few questions about the  
25 usage agreement, Your Honor. So I would ask that Mr.

116

Mr. Landeen - Direct - Mr. Tokayer

1 Katz --

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Is Exhibit 14 an e-mail string that you both wrote  
2 and received in May of 2010?

3 A. Yes.

4 MR. MEHLMAN: It's actually March of 2010, if  
5 that's the exhibit you're referring to. Is it 14?

6 MR. TOKAYER: Did I misspeak? I meant March of  
7 2010.

8 MR. MEHLMAN: Objection, relevance, Your Honor.  
9 March 2010 is months before the injunction. None of this  
10 --

11 THE COURT: I've already ruled on this. I will  
12 allow it --

13 Q. Was Kosher --

14 THE COURT: -- as background.

15 Q. Was Kosher Sports in default of its agreement with  
16 QBC at the time of your e-mail string, Exhibit 14, March  
17 18th, 2010?

18 A. I'm not sure.

19 Q. Were you asked the following questions at your  
20 deposition and give the following response?

21 MR. TOKAYER: Page?

22 Q. Page 251 Line 20:

23 "Q At the time that you authored  
24 that e-mail on March 18th, 2010, was  
25 Kosher Sports in default of any of

Mr. Landeen - Direct - Mr. Tokayer

1 its obligations?

2 "A With whom?

3 "Q To Kosher Sports.

4 "MR. MEHLMAN: You mean QBC?

5 "MR. TOKAYER: Yes, I did mean that.

6 A I'm not sure. Again, I don't know  
7 the time period. I just know that at  
8 some point, I don't think this would  
9 have been it, that he was delinquent  
10 on bills, but I don't know if it was  
11 at this point.

12 Q Right. Because in fact, his  
13 sponsorship fees weren't due until  
14 April 1st.

15 A Right. So it probably wouldn't  
16 have been."

17 Were you asked that question? Did you give those  
18 responses?

19 A. Yes.

20 Q. And in fact was Kosher Sports in default of its  
21 agreement with Aramark at the time of the March 18, 2010  
22 e-mail?

23 A. I don't believe so.

24 Q. At the same time in March of 2010 was Mr. Barrick --  
25 step back a little. Who is Adam Barrick?

Mr. Landeen - Direct - Mr. Tokayer

1 A. Adam Barrick works in our corporate sponsorship.

2 Q. He works for QBC?

3 A. Correct.

4 Q. Okay. And in March 2010, was Mr. Barrick looking  
5 into Kosher Sports' agreement with Aramark?

6 MR. TOKAYER: Objection.

7 THE COURT: Sustained as to form.

8 Q. In March of 2010, was Mr. Barrick -- did Mr. Barrick  
9 request a copy of the Kosher Sports agreement with  
10 Aramark from Aramark?

11 A. I believe so.

12 Q. And in fact, that request was made by e-mail,  
13 correct?

14 A. Yes.

15 Q. And in response to that request, Mr. Funk asked you  
16 by e-mail whether you were okay with him sending Mr.  
17 Barrick the Kosher Sports/Aramark agreement, right?

18 A. Yes.

19 Q. And is Exhibit 13 a copy of Barrick's e-mail to Mr.  
20 Funk and Mr. Funk's e-mail to you?

21 A. Yes.

22 MR. TOKAYER: I'd like to move Exhibit 13 into  
23 evidence, Your Honor.

24 THE COURT: Received.

25 (Plaintiff's Exhibit No. 13 received into evidence)



Mr. Landeen - Direct - Mr. Tokayer

1 Q. Is Mr. Barrick looking into Kosher Sports' agreement  
2 with Aramark at this time for the purpose of seeing if  
3 Kosher Sports' relationship with Citi Field could be  
4 terminated?

5 MR. MEHLMAN: Objection.

6 THE COURT: Do you know -- do you have personal  
7 knowledge as to why Mr. Barrick wanted to see the  
8 contract?

9 THE WITNESS: I don't recall. It could have  
10 been for what he's -- you know, goods that he was  
11 contracted to sell. I don't know. There was no reason  
12 why he couldn't have it or many other reasons why he  
13 wanted it, but I don't recall exactly why he wanted it at  
14 that point.

15 Q. In March of 2010, wasn't QBC contemplating legal  
16 action against Kosher Sports?

17 MR. MEHLMAN: Objection.

18 THE COURT: If you know.

19 THE WITNESS: Can you repeat the question?

20 Q. Sure. In March of 2010, was Queens Ballpark Company  
21 contemplating legal action against Kosher Sports?

22 A. I know at some point we were but I don't know the  
23 actual date.

24 Q. Can I invite your attention to Exhibit 15? Is this  
25 an e-mail string that you participated in back in March

Mr. Landeen - Direct - Mr. Tokayer

1 of 2010?

2 A. Yes, I see my name on here.

3 Q. And does Mr. Barrick write you an e-mail referring to  
4 legal action on march 26th, 2010 at 8:25 p.m.?

5 MR. MEHLMAN: Objection. I believe to be  
6 accurate the entire string should be reviewed not just  
7 two words.

8 THE COURT: He can draw the witness's attention  
9 to a particular portion of the string, and if it comes in  
10 presumably the entire string will come in. Is it in  
11 evidence already?

12 MR. TOKAYER: I have not moved it in yet, but  
13 after the question I will.

14 THE WITNESS: I -- where are you directing my  
15 attention because as I read through it I don't see  
16 anything that indicates --

17 MR. TOKAYER: Well, first let me move Exhibit  
18 15 into evidence, Your Honor.

19 THE COURT: Any objection other than the time  
20 issue?

21 MR. MEHLMAN: No.

22 THE COURT: All right. Received.

23 (Plaintiff's Exhibit No. 15 received into evidence)

24 Q. Okay. Let me invite your attention to the e-mail --  
25 the second e-mail on the first page. It's dated March

Mr. Landeen - Direct - Mr. Tokayer

1 26, 2010 at 8:25 p.m. from Mr. Barrick to you, among  
2 others. Do you see that?

3 A. Yes.

4 Q. Does that refresh your recollection that at that time  
5 QBC was contemplating legal action against Kosher Sports?

6 A. Again, from this e-mail I can't interpret that. So I  
7 just see that legal has advised us to move forward with  
8 his sponsorship as is. So as far as I'm concerned,  
9 everything from this e-mail at this point is status quo.  
10 I don't see anything stating that QBC is taking legal  
11 action against Kosher Sports.

12 Q. Okay. Second sentence says that his first payment is  
13 due on April 1. We will proceed with any legal action if  
14 need be after that. Do you see that?

15 A. Correct.

16 Q. Do you recall getting that?

17 A. Correct.

18 Q. Now, in April of 2010 isn't it true that QBC was  
19 looking to get rid of Kosher Sports and replace it with a  
20 vendor, Hain Celestial?

21 A. Again, we weren't looking to get rid of Kosher  
22 Sports. We were making contingency plans because we had  
23 heard that Jonathan was not happy.

24 Q. The answer --

25 A. He had left us in Brooklyn.

130

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Yeah. The answer is yes or no. Were they looking to  
2 get rid of Kosher Sports and replace it with Hain  
3 Celestial?

4 MR. MEHLMAN: Objection. I'm going to ask that  
5 the witness be allowed to answer the question he started  
6 his answer.

7 THE COURT: Well, he can answer yes or no to  
8 that.

9 THE WITNESS: No.

10 Q. Okay. Let me invite your attention to Exhibit 17.  
11 Is that an e-mail string that you wrote and received in  
12 April of 2010?

13 A. I didn't write any e-mails here. I'm included on the  
14 e-mails but I did receive it obviously. But I did write  
15 anything on this e-mail.

16 Q. Yeah. But you received these e-mails back in April  
17 of 2010?

18 A. I did.

19 MR. TOKAYER: I'd like to move Exhibit 17 into  
20 evidence.

21 THE COURT: Any objection?

22 MR. MEHLMAN: He didn't write them, Your Honor.  
23 I don't know that receiving an e-mail is a proper  
24 foundation for moving something into evidence. That  
25 being said, I want to expedite the hearing.

Mr. Landeen - Direct - Mr. Tokayer

1 THE COURT: Received.

2 (Plaintiff's Exhibit No. 17 received into evidence)

3 Q. Okay. Did you receive that top e-mail from Mr.  
4 Helfer dated April 14th, 2010 at 3:21 p.m.?

5 A. Yes.

6 Q. Okay. And did Mr. Helfer write you, quote, in the  
7 second sentence, "Let's get rid of this punk and make it  
8 happen with Irwin"?

9 A. Yes.

10 Q. Was Mr. Helfer looking to get rid of Kosher Sports  
11 back in April of 2010 and replace it with Irwin from Hain  
12 Celestial?

13 MR. MEHLMAN: Objection.

14 THE COURT: Sustained.

15 Q. Did you understand that it was Mr. Helfer -- Mr.  
16 Helfer wanted to get rid of Jon Katz and Kosher Sports on  
17 April 14th, 2010?

18 MR. MEHLMAN: Objection.

19 THE COURT: Sustained.

20 Q. Who was Irwin?

21 A. Irwin is a -- he's a sponsor of Hain Celestial Group  
22 we do some advertising with.

23 Q. And did you understand when you received Mr. Helfer's  
24 e-mail that the word punk was a reference to Mr. Katz?

25 A. Yes.

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Who's Mr. Helfer?

2 A. Mr. Helfer was an employee of QBC in the sales  
3 department.

4 Q. On April 14th, 2010?

5 A. Correct.

6 Q. And who was Paul Asencio?

7 A. Paul is his direct boss.

8 Q. And what's your relationship with Mr. Asencio?

9 A. As far as just within the organization?

10 Q. Yes.

11 A. He's a peer.

12 Q. Okay.

13 A. He's at my level or --

14 Q. Okay. So you're in the venue service department and  
15 he's your counterpart in the sales department.

16 A. Correct.

17 Q. And who is Mr. Schwartz?

18 A. Mr. Schwartz works for me.

19 Q. Now, were you aware in April of 2010 that Mr. Helfer  
20 was discussing replacing Kosher Sports with Hain  
21 Celestial? Were you aware of those conversations?

22 A. I was aware of the conversations.

23 Q. And did you ever instruct anyone to cease those  
24 conversations of replacing Kosher Sports with Hain  
25 Celestial at any time?

Mr. Landeen - Direct - Mr. Tokayer

1 A. No.

2 Q. Are you aware of anyone who directed that those  
3 discussions cease?

4 A. No.

5 Q. In May of 2010 it was clear to you, was it not, Mr.  
6 Landeen, that Kosher Sports' relationship with Citi Field  
7 had to be terminated; isn't that true?

8 A. No.

9 Q. Let me ask you to look at Exhibit 20 if you would.  
10 That top e-mail dated May 24th, 2010 at 9:29 p.m., is  
11 that authored by you?

12 A. It is.

13 MR. TOKAYER: I'd like to move Exhibit 20 into  
14 evidence.

15 THE COURT: Any objection?

16 MR. MEHLMAN: None.

17 THE COURT: Received.

18 (Plaintiff's Exhibit No. 20 received into evidence)

19 Q. Okay. And did you say in May of 2010, quote, "This  
20 only makes it much more clear to me that the relationship  
21 needs to end," unquote?

22 A. Yes.

23 Q. And you're referring to the relationship with Kosher  
24 Sports, correct?

25 A. For this particular instance, yes.

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Now, QBC's efforts to replace Kosher Sports, whether  
2 with Hain Celestial or somebody else, continued even  
3 after Kosher Sports commenced its action against QBC,  
4 correct?

5 "MR. MEHLMAN: Objection to the word "replace"  
6 Your Honor. That was not the witness's testimony.

7 THE COURT: Can I hear the question again?

8 Q. QBC's efforts to replace Kosher Sports with Hain  
9 Celestial or another kosher vendor continued after the  
10 lawsuit was commenced.

11 THE COURT: Overruled.

12 THE WITNESS: Again, if I have to answer the  
13 question yes or no, again, it's yes but it wasn't a  
14 replacement. It was a contingency plan, as I've stated  
15 in my deposition several times.

16 Q. And QBC's venue service department had weekly  
17 meetings with Aramark, correct?

18 A. Yes.

19 Q. These weekly meetings occurred both during the season  
20 and during the off season, correct?

21 A. Correct.

22 Q. And these weekly meetings did not stop when the  
23 lawsuit commenced, correct?

24 A. Correct.

25 Q. Nor did it stop after Judge Weinstein issued his



Mr. Landeen - Direct - Mr. Tokayer

1 injunction, correct?

2 A. Correct.

3 Q. Do you recall on June 15th, 2010 you, Mr. Landeen,  
4 put Kosher Sports on the agenda for one of those weekly  
5 meetings?

6 A. Yes.

7 Q. Okay. And at that meeting on June 15th, Paul  
8 Schwartz undertook to set up meetings with alternative  
9 kosher vendors, correct?

10 A. Correct.

11 Q. And Exhibit 23 are the -- is the agenda and the  
12 minutes of that June 15th, 2010 weekly venue services  
13 department meeting between venue services and Aramark,  
14 correct?

15 A. Correct.

16 Q. Okay. These agenda and minutes were prepared by one  
17 of your employees, Ms. Garza?

18 A. Yes.

19 Q. And was it her custom and practice to then circulate  
20 the minutes by e-mail after the meeting?

21 A. Yes.

22 MR. TOKAYER: I'd like to move Exhibit 23 into  
23 evidence, Your Honor.

24 MR. MEHLMAN: No objection.

25 THE COURT: Received.

Mr. Landeen - Direct - Mr. Tokayer

1 (Plaintiff's Exhibit No. 23 received into evidence)

2 MR. MEHLMAN: Just a note that it's June 15th,  
3 2010.

4 THE COURT: Yes, I'm aware of that.

5 Q. At some point, Mr. Katz told you, Mr. Landeen, of his  
6 desire to have Kosher Sports operate on Fridays and  
7 Saturdays, correct?

8 A. Correct.

9 Q. And in fact, that's how you first learned of it,  
10 right?

11 A. Correct.

12 Q. And at that time, you asked Mr. Katz for a letter  
13 from a rabbi stating that he could operate on Fridays and  
14 Saturdays --

15 MR. MEHLMAN: Objection.

16 Q. -- correct?

17 THE COURT: Overruled.

18 THE WITNESS: Correct.

19 Q. And he provided you with that letter shortly  
20 thereafter, right?

21 A. Again, I don't remember the time frame, but yes from  
22 what I recall.

23 Q. And after receiving that letter, you spoke with  
24 people in the Mets organization including Dave Howard,  
25 right?

Mr. Landeen - Direct - Mr. Tokayer

1 A. That is correct.

2 Q. And the Mets at that point -- and Mr. Howard and you  
3 had concerns about Kosher Sports operating on Fridays and  
4 Saturdays, correct?

5 MR. MEHLMAN: Objection, relevance, Your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 Q. And you conveyed those concerns about Kosher Sports  
9 operating on Friday and Saturdays to Aramark, right?

10 A. Yes.

11 Q. After the lawsuit was commenced, those conversations  
12 were before or after -- that was before the lawsuit was  
13 commenced, correct, the conversation with Mr. Howard and  
14 the concern that you relayed to Aramark?

15 A. Correct.

16 Q. Okay. And after the lawsuit, you and Mr. Howard had  
17 another conversation about Kosher Sports' interest in  
18 operating on Fridays and Saturdays?

19 A. We may have. I don't recall exactly.

20 Q. Do you recall telling Mr. Howard after this lawsuit  
21 was commenced that you were not comfortable letting  
22 Aramark let Kosher Sports operate on Fridays and  
23 Saturdays?

24 MR. MEHLMAN: Objection.

25 THE COURT: Overruled.

Mr. Landeen - Direct - Mr. Tokayer

1 THE WITNESS: I don't recall.

2 Q. Can we just again refer to your deposition on May  
3 24th, 2011, page 6 line 6?

4 "Question: Did you see -- Question: Did you  
5 see a copy of the complaint?

6 "Answer: I did."

7 Line 16:

8 "Question: Have you discussed the allegations  
9 of the complaint with any representatives of the New York  
10 Mets?

11 "Answer: Yes."

12 Page 7, line 13:

13 "Question: What did you and Mr. Howard discuss  
14 with respect to the allegations of the complaint?

15 "Answer: We discussed the -- basically  
16 discussed the fourth location issue and the  
17 Friday/Saturday request."

18 Line -- page 8, line 19:

19 "Question: What did you and Mr. Howard discuss  
20 about the Friday/Saturday sales?

21 "Answer: Friday/Saturday we discussed. We  
22 basically -- it was something that we had never done at  
23 Shea and something we weren't comfortable letting Aramark  
24 provide Jonathan in doing so based on PR ramifications as  
25 well as potential sponsorship issues with Nathan's and

Mr. Landeen - Direct - Mr. Tokayer

1 Premio (ph.).

2 Were you asked those questions and did you give that  
3 -- those responses?

4 A. Yes.

5 Q. Did you come to learn that the judge in this case  
6 held a hearing on Kosher Sports' request for an  
7 injunction?

8 A. Yes.

9 Q. And you heard that Judge Weinstein had actually  
10 issued an injunction, right?

11 A. Yes.

12 Q. And you understood that the judge had prohibited QBC  
13 from interfering with Kosher Sports' operations in any  
14 way or persuading Aramark in any way, correct? That was  
15 your understanding.

16 MR. MEHLMAN: Objection.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 Q. Yet on August 13th of 2010, hours after learning  
20 about the injunction, you reached out to Aramark,  
21 correct?

22 A. Yes.

23 Q. First you called Scott Wiegert and left a message,  
24 right?

25 A. Correct.

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Then you spoke with Clint Westbrook.

2 A. Yes, I believe so.

3 Q. And then you e-mailed Scott Wiegert to tell him that  
4 you had filled Mr. Westbrook in, correct?

5 A. That's correct.

6 Q. Okay. And let me just show you Exhibit 27 if you  
7 would turn to it. Is that an e-mail that you received  
8 and wrote on August 13, 2010 at approximately 7:00 p.m.?

9 A. Yes.

10 MR. TOKAYER: I'd like to move Exhibit 27 into  
11 evidence.

12 MR. MEHLMAN: No objection.

13 THE COURT: Received.

14 (Plaintiff's Exhibit No. 27 received into evidence)

15 Q. Who is Scott Wiegert?

16 A. Scott Wiegert is -- I don't know his title. I  
17 believe he's resident district manager for Aramark and is  
18 housed out of Citi Field.

19 Q. Is it outside of Citi Field?

20 A. He is housed out of -- his office is out of Citi  
21 Field.

22 Q. Okay. And you understand Mr. Kleckner reports  
23 directly to him?

24 A. That's correct.

25 Q. And who is Mr. Westbrook?

Mr. Landeen - Direct - Mr. Tokayer

1 A. Mr. Westbrook is a regional vice president with  
2 Aramark who Scott Wiegert reports to.

3 Q. And Exhibit 27 is the e-mail that you sent to Mr.  
4 Wiegert just hours after learning about Judge Weinstein's  
5 injunction, correct?

6 A. Yes.

7 Q. Now, when you say you filled Clint in, didn't you  
8 tell Mr. Westbrook as that -- as a result of the  
9 injunction you were not going to speak to Aramark about  
10 Kosher Sports anymore?

11 A. Yes, relating to his -- the operations.

12 Q. And didn't you tell Clint Westbrook that Kosher  
13 Sports' operations at Citi Field should remain status  
14 quo?

15 A. I believe so, yes.

16 Q. And the status quo on August 13th, 2010 was that  
17 Kosher Sports was not operating on Fridays and Saturdays,  
18 correct?

19 A. No, that was not the intent.

20 Q. What was the status quo? Was Kosher Sports operating  
21 on Fridays and Saturdays on August 13th, 2010?

22 MR. MEHLMAN: Objection.

23 THE COURT: I'll allow the question.

24 THE WITNESS: Can you repeat the question?

25 Q. Was Kosher Sports operating on Fridays and Saturdays

Mr. Landeen - Direct - Mr. Tokayer

1 on or about August 13th, 2010?

2 A. No.

3 Q. Do you remember giving this -- being asked this  
4 question and giving this response, page 17 line 22?

5 "Q What did you say to Mr. Westbrook  
6 on August 13th and what did he  
7 respond?

8 "A I just basically told him what  
9 was communicated to me from our  
10 attorney on the outcome of it and  
11 that, you know, he and Scott can  
12 connect on it. That was really it.

13 "Q What did you tell him about the  
14 outcome?

15 "A Just that we were not going to  
16 speak of Kosher Sports and they were  
17 to -- they were basically -- you  
18 know, they were status quo as far as  
19 I was concerned."

20 You -- were you asked that question and did you give  
21 those responses?

22 MR. MEHLMAN: Objection, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: I believe I answered that, but  
25 yes.



143

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Okay. Did you ultimately see a copy of Judge  
2 Weinstein's order?

3 A. I believe I may have.

4 Q. Did you in fact see a copy of the order?

5 MR. MEHLMAN: Objection, asked and answered.

6 THE COURT: Did you see a copy of the order?

7 THE WITNESS: I think I did.

8 Q. Okay. Let me again direct you to your deposition on  
9 page 95 line 18.

10 "Q If I asked you this I apologize,  
11 but did you see a copy of the  
12 injunction issued by Judge Weinstein?

13 "A A copy of the ... yes.

14 "Q Did you see -- Question: Did you  
15 see it at or about the time it was  
16 issued?

17 "A Thereabouts."

18 Were you asked those questions and did you give those  
19 responses?

20 A. Yes.

21 Q. You testified that Mr. Schwartz works for you,  
22 correct?

23 A. Yes.

24 Q. Was Mr. Schwartz aware of the Court's injunction as  
25 well?

Mr. Landeen - Direct - Mr. Tokayer

1 MR. MEHLMAN: Objection.

2 THE COURT: Sustained.

3 Q. Do you know whether Mr. Schwartz was aware of the  
4 Court's injunction?

5 A. At what period of time, now?

6 Q. At the time that it was issued.

7 A. I believe he was made aware somehow. I don't know  
8 exactly when, but I know he was made aware.

9 Q. Did you learn in September of 2010 that  
10 notwithstanding the Court's injunction Paul Schwartz told  
11 Tom Funk of Aramark not to allow Kosher Sports to close  
12 location K-428 for the Pittsburgh series?

13 MR. MEHLMAN: Objection.

14 THE COURT: Do you have any personal knowledge  
15 of that?

16 THE WITNESS: I do recall I think I was cc'd on  
17 an e-mail, but I didn't respond or have any input on it.

18 Q. Okay. Exhibit 33, are those the e-mails that you  
19 were aware of in September of 2010?

20 MR. MEHLMAN: Exhibit?

21 MR. TOKAYER: Thirty-three.

22 THE COURT: Thirty-three.

23 MR. MEHLMAN: Thank you.

24 THE WITNESS: Yes.

25 Q. Okay. And you were aware of the third e-mail I

Mr. Landeen - Direct - Mr. Tokayer

1 believe it is from Mr. Schwartz to Mr. Funk with a copy  
2 to you, Mr. Landeen, dated September 7th, 2010 at 9:55  
3 a.m. and it reads, "This is not okay from our  
4 perspective"? Do you see that?

5 A. Yes.

6 Q. Does this refresh your recollection that in September  
7 of 2010 you were aware that Mr. Schwartz told Mr. Funk  
8 not to allow Kosher Sports to close its stand K-428 on  
9 the promenade level for the Pittsburgh series?

10 A. Yes.

11 MR. TOKAYER: I'd like to move Exhibit 33 into  
12 evidence.

13 THE COURT: Received.

14 (Plaintiff's Exhibit No. 33 received into evidence)

15 Q. We talked about the venue service department meetings  
16 with Aramark, those weekly meetings. KSI was discussed  
17 at those meetings during the off season at the end of  
18 2010, correct?

19 A. Yes.

20 Q. And that's after the judge's injunction, right?

21 A. Yes.

22 Q. In any of those meetings did you and Aramark discuss  
23 terminating Kosher Sports' relationship at Citi Field?

24 A. No.

25 Q. In any of those meetings did you ask Aramark whether

146

Mr. Landeen - Direct - Mr. Tokayer

1 Kosher Sports was in breach of its contract with Aramark?

2 A. Yes.

3 Q. And I'd ask you to turn to Exhibit 34. Are those the  
4 official meeting minutes of a weekly venue services  
5 Aramark meeting on October 12th, 2010?

6 A. Yes.

7 MR. TOKAYER: I'd like to move Exhibit 34 into  
8 evidence.

9 THE COURT: Received.

10 (Plaintiff's Exhibit No. 34 received into evidence)

11 Q. Now, item A refers to Kosher Sports, correct?

12 A. No.

13 Q. Who was the kosher guy from MCU referred to in that  
14 first line?

15 A. The kosher guy was a vendor that our general manager  
16 at the time had found since Jonathan had packed up and  
17 left us out to dry. We didn't have a kosher vendor down  
18 there, so that was someone that he replaced him with --

19 Q. I'm referring --

20 A. -- because Jonathan had left.

21 THE COURT: Down there --

22 THE WITNESS: Brooklyn Cyclones.

23 Q. Okay. MCU is the MCU Park, correct?

24 A. That's correct.

25 Q. Okay. And the MCU -- the kosher guy from MCU is

Mr. Landeen - Direct - Mr. Tokayer

1 Super Sal?

2 A. I have no idea who it is.

3 Q. Okay. And why was Mr. Wiegert at this time setting  
4 up a meeting with the kosher guy from MCU?

5 A. I believe he was going to try and set up a contract  
6 with him to be a subcontractor down there with Aramark.

7 Q. And when it says Aramark to figure out legal side  
8 with existing kosher, who's the existing kosher in that  
9 line?

10 A. I couldn't tell you.

11 Q. Did you at that time have a relationship with Kosher  
12 Sports, October 12th of 2010?

13 MR. MEHLMAN: Objection.

14 THE COURT: Overruled. Well, sustained as to  
15 form. Are you talking about a relationship with Kosher  
16 Sports with respect to MCU?

17 MR. TOKAYER: No.

18 Q. Was --

19 THE COURT: Well, I'm confused now. As the  
20 fact finder I'd like a little clarification.

21 MR. TOKAYER: Yes.

22 THE COURT: You referred to Jonathan packing up  
23 and leaving. I assumed you mean Mr. Katz?

24 THE WITNESS: Yes, correct.

25 THE COURT: Leaving where?

148

Mr. Landeen - Direct - Mr. Tokayer

1 THE WITNESS: MCU.

2 THE COURT: What was the previous relationship  
3 with the Plaintiff at MCU?

4 THE WITNESS: He was the kosher provider there.  
5 And again, I can't speak to it because I didn't deal with  
6 him down there, but they had various issues where he  
7 wouldn't open all of the locations. So I know there were  
8 some issues in the time period. I know it was 2009. So  
9 from this, that's -- this has to do with everything from  
10 MCU, which is a separate contract. It's a separate  
11 Aramark contract that has nothing to do with QBC.

12 Q. And my question to you is whether or not Kosher  
13 Sports at this time was an existing vendor of QBC's at  
14 Citi Field.

15 A. I couldn't tell you. I have no idea.

16 Q. On October 12th, 2010 you don't know whether or not  
17 --

18 A. For who, for MCU or for QBC?

19 Q. QB --

20 A. There's -- they're two different agreements.

21 Q. QBC at Citi Field.

22 A. Yes.

23 Q. So Kosher Sports was an existing vendor of QBC's at  
24 Citi Field, correct?

25 A. At Citi Field, but this clearly talks about MCU.

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Well, okay. That's what I want to explore with you.

2 A. Okay.

3 Q. Okay. At this time were you looking to replace Mr.  
4 Katz and Kosher Sports at Citi Field with the kosher  
5 vendor from MCU?

6 MR. MEHLMAN: Objection.

7 THE COURT: I'm sorry. Can I have the question  
8 again?

9 MR. TOKAYER: Sure.

10 Q. On October 12th, 2010 was QBC seeking to replace Mr.  
11 Katz and Kosher Sports, the existing vendor at Citi  
12 Field, with the kosher vendor from MCU?

13 THE COURT: Overruled.

14 THE WITNESS: To my knowledge, no.

15 Q. Is -- let me ask you to turn to Exhibit 36. Okay.  
16 Did you put Kosher Sports on the November 2nd, 2010  
17 weekly meeting agenda?

18 A. I did not. Tom Funk did from this exhibit.

19 Q. Okay. And you refer to -- in 3C to kosher. What are  
20 you referring to?

21 A. I don't recall.

22 Q. And are these the official agenda meeting minutes --  
23 agenda -- is it the official agenda of the November 2nd,  
24 2010 minutes?

25 A. Yes.

150

Mr. Landeen - Direct - Mr. Tokayer

1 MR. TOKAYER: I'd like to move Exhibit 36 into  
2 evidence.

3 THE COURT: Any objection?

4 MR. MEHLMAN: No.

5 THE COURT: Received.

6 (Plaintiff's Exhibit No. 36 received into evidence)

7 Q. Have you seen the minutes of the November 2nd  
8 meeting?

9 A. Have I seen them?

10 Q. I'll withdraw the question. Where are the minutes  
11 for the November 2nd meeting?

12 A. Where are the minutes? Again, I would assume they  
13 were distributed via e-mail if there were any.

14 Q. At the November 2nd meeting was Kosher Sports'  
15 agreement with Aramark discussed?

16 A. I don't remember exactly what was discussed, but  
17 again --

18 Q. Was the termination of Kosher -- of the agreement  
19 between Kosher Sports and Aramark discussed?

20 A. No.

21 Q. Was replacing Kosher Sports with another vendor  
22 discussed at the November 2nd, 2010 meeting?

23 A. Contingency plans, yes.

24 Q. And when you say contingency plan, you mean that you  
25 were afraid that Mr. Katz would leave Citi Field and



Mr. Landeen - Direct - Mr. Tokayer

1 would need to be replaced, correct?

2 A. That's correct.

3 Q. Did Mr. Katz ever express in writing to you that he  
4 was intent on leaving Citi Field?

5 A. Not to me.

6 Q. Did he ever say that in writing to anybody as far as  
7 you know?

8 A. I couldn't tell you. I heard it verbally from  
9 others.

10 MR. TOKAYER: I move to strike that last  
11 portion, Your Honor, as unresponsive and hearsay.

12 MR. MEHLMAN: Objection, Your Honor. He asked  
13 the question. He's got to allow the answer.

14 THE COURT: I'll allow it to stand.

15 Q. Did you ask that Kosher Sports be put on the agenda  
16 for the November 11th weekly meeting?

17 A. Again, we're -- I'm -- I couldn't -- I may have. I  
18 may have not.

19 Q. Okay. Let me ask --

20 A. I couldn't remember.

21 Q. Okay. Let's see if Exhibit 37 refreshes your  
22 recollection. Is that an e-mail that you wrote to Ms.  
23 Garza and Mr. Schwartz concerning the November 11th, 2010  
24 upcoming weekly meeting?

25 A. Yes.

152

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Okay. Does kosher update refer to Kosher Sports?

2 A. I don't know if it refers to Kosher Sports or just  
3 kosher in general.

4 Q. What was discussed about kosher in general at the  
5 meeting if you remember?

6 A. I don't recall.

7 Q. At the November 11th weekly meeting was Kosher  
8 Sports' agreement with Aramark discussed?

9 A. Can you repeat that please?

10 Q. Sure. At the November 11, 2010 meeting did you and  
11 Aramark discuss Kosher Sports' agreement with Aramark?

12 A. I don't recall.

13 Q. Did you discuss terminating or having Aramark  
14 terminate Kosher Sports' agreement with Aramark?

15

16 A. No never terminating.

17 Q. Was replacing Mr. Katz with another vendor discussed  
18 at that 11/11 meeting?

19 A. Potentially.

20 Q. Let me ask you to turn to Exhibit 38. Is that the  
21 official agenda for the November 11th meeting and the  
22 minutes?

23 A. Yes.

24 MR. TOKAYER: I'd like to move in Exhibit 38,  
25 if I can.

Mr. Landeen - Direct - Mr. Tokayer

1 THE COURT: Received.

2 (Plaintiff's Exhibit No. 38 received in evidence)

3 Q. If you would refer to Item J on the second page, it  
4 says all outstanding issues have been cleared up with  
5 Katz. Do you know what outstanding issues were  
6 discussed?

7 A. I don't recall off the top of my head.

8 Q. Is Katz a reference to John Katz?

9 A. Yes.

10 Q. When it says Scott Wiegert will follow up with vendor  
11 from MCU, do you recall discussing replacing Mr. Cass  
12 with that vendor from MCU at this meeting?

13 A. No, I don't.

14 Q. Who said that all the outstanding issues with Mr.  
15 Katz were cleared up?

16 A. Scott Wiegert.

17 Q. Why did he say that?

18 A. I have no idea.

19 Q. Was that in response to your question as to whether  
20 or not Aramark would terminate Kosher Sports' agreement?

21 A. No. He obviously had a conversation with Mr. Katz  
22 and whatever issues there were he cleared up and just let  
23 me know.

24 Q. What does it mean then that Scott Wiegert was still  
25 following up with the vendor from MCU, what was discussed

Mr. Landeen - Direct - Mr. Tokayer

1 in that regard?

2 A. Again, I don't recall but I'm going to go back to  
3 what I believe I remember which was it had everything to  
4 do with MCU and nothing to do with Citi Field.

5 Q. So at this time did MCU have a kosher vendor on the  
6 contract or not?

7 A. To my knowledge, no.

8 Q. Who had been the vendor there in 2010 during the  
9 season?

10 A. I don't know.

11 Q. Who was the vendor in 2011?

12 A. I still couldn't tell you, I don't know.

13 Q. Was Kosher Sports on the agenda for the December 7th  
14 weekly meeting in 2009?

15 A. I guess you'd have to show me the, show me the  
16 exhibit because I --

17 Q. Okay, sure.

18 MR. TOKAYER: Exhibit 39.

19 Q. You'll see the front page as from Christina Garza --

20 A. Yes.

21 Q. -- to you and Mr. Schwartz and Mr. Kleckner and Mr.  
22 Funk, right?

23 A. Correct.

24 Q. And this typically the way the minutes were -- the  
25 agenda and the minutes, sorry -- is this typically the

Mr. Landeen - Direct - Mr. Tokayer

1 way the minutes would be circulated after the meeting?

2 A. Yes.

3 Q. As far as who would e-mail the minutes to the  
4 attendees?

5 A. Correct.

6 Q. The second page was a redacted version which you  
7 received from Aramark, so let me refer you to the last  
8 page which is the minutes which were received from you  
9 from QBC. Do you have that page in front you?

10 A. Yes.

11 Q. Does that refresh your recollection that in fact  
12 Kosher Sports was discussed at the December 7th 2010  
13 meeting?

14 A. Yes.

15 MR. TOKAYER: I'd like to move Exhibit 39 into  
16 evidence.

17 THE COURT: Received.

18 (Plaintiff's Exhibit No. 39 received in evidence)

19 Q. And do you recall at this meeting asking Aramark  
20 whether or not Kosher Sports was in breach of it's  
21 agreement with Aramark?

22 A. Yes.

23 Q. And that was for the purpose of getting Aramark to  
24 terminate Kosher Sports; correct?

25 A. No.

Mr. Landeen - Direct - Mr. Tokayer

1 Q. Leaving the meetings aside, during the off season did  
2 you discuss with any representative of Aramark  
3 terminating Kosher Sports?

4 A. At what point in time?

5 Q. During the off season, at the end of 2010?

6 A. No.

7 Q. Between the end of the 2010 season and the beginning  
8 of the 2011 season?

9 A. No.

10 Q. Do you know if anyone, did any representative of QBC  
11 discuss with any representative if Aramark terminating  
12 Kosher Sports?

13 A. To my knowledge, no.

14 Q. At that time of during the off season between 2010  
15 and 2011 season was QBC looking to have another vendor on  
16 the shelf so you could tell Kosher Sports to pound sand?

17 A. Those weren't my words, so I couldn't comment on  
18 that. But as far as having someone ready from a  
19 contingency standpoint, we needed someone ready because  
20 we needed to serve that clientele. We always have so  
21 therefore we needed to have that service ready. It  
22 wasn't just an easy fix.

23 Q. But you didn't want to terminate Kosher Sports,  
24 right, you were just concerned that he would leave on his  
25 own; correct?

Mr. Landeen - Cross - Mr. Mehlman

1 A. Correct.

2 MR. TOKAYER: No further questions for this  
3 witness.

4 THE COURT: All right.

5 MR. TOKAYER: Hold on one minute, Your Honor.  
6 I just want to confer with my co-counsel here.

7 (Pause)

8 MR. TOKAYER: Just for the record I note that  
9 your Honor said that you would visit the issue of the  
10 sanctions and our cross motion at the end of the day.

11 THE COURT: No, I didn't. I said I wouldn't do  
12 it in the beginning.

13 MR. TOKAYER: Do it now. Okay.

14 We believe that there is still minutes that  
15 have not been produced yet so to that extent I can't  
16 examine Mr. Landeen any further about that and, you know,  
17 I would just on the record reserve the ability to  
18 question to the extent that there are additional minutes  
19 that haven't been produced, Your Honor. Other than that  
20 I have no questions..

21 THE COURT: All right. Let's finish up with  
22 this witness then we'll take our lunch break.

23 CROSS EXAMINATION

24 BY MR. MEHLMAN:

25 Q. Mr. Landeen who has the individual, or QBC was in

Mr. Landeen ~ Cross - Mr. Mehlman

1 charge of vendor services. It's important to insure that  
2 there is kosher food available for those who strictly  
3 observe and want to eat kosher; is that correct?

4 A. Yes.

5 MR. TOKAYER: Objection, it's leading, your  
6 Honor.

7 MR. MEHLMAN: Cross examination, your Honor.

8 THE COURT: I'll allow it.

9 Q. In fact, it's important to you and for QBC to assure  
10 that all guests are served the products that they're  
11 looking for at the stadium; isn't that correct?

12 A. Correct.

13 Q. And you have various specialty menus to insure that  
14 these guests are served; correct?

15 A. Correct.

16 Q. In fact you even have gluten free cart that sells  
17 gluten free foods; is that correct?

18 A. That's correct.

19 Q. And that's because guests come to the ballpark and  
20 they're looking for gluten free food; is that correct?

21 A. Yes.

22 Q. And as, in your capacity working for QBC it's  
23 essential to insure that there's a kosher provider of  
24 kosher fare; correct?

25 A. Correct.



Mr. Landeen - Cross - Mr. Mehlman

1 Q. And you stated during direct examination that back in  
2 April of 2010 before there even was a lawsuit filed, you  
3 had interviewed or you were aware of interviews of  
4 various other kosher providers; is that correct?

5 A. Correct.

6 Q. And Mr. Katz was still operating at the stadium; is  
7 that correct, at the time?

8 A. Correct.

9 Q. And in fact in April of 2010 -- excuse me, withdrawn.

10 And Mr. Katz was still serving the Glatt Kosher  
11 food; is that correct?

12 A. Yes.

13 Q. So why was that you were interviewing other providers  
14 and other kosher vendors at the time?

15 A. Again, I had heard that Mr. Katz was unhappy. I know  
16 that --

17 MR. TOKAYER: Objection. Hearsay, your Honor.

18 THE COURT: How did you hear this?

19 THE WITNESS: I heard it from, specifically  
20 Peter Helfer who works in our corporate sales department  
21 and from Tom Funk from Aramark.

22 THE COURT: All right. I don't want to hear  
23 specifically what they said to you, and Mr. Funk will be  
24 testifying so we can hear from him.

25 THE WITNESS: Right.

Mr. Landeen - Cross - Mr. Mehlman

1 Q. But based on those conversations you thought it was  
2 important to at least have a contingency plan; is that  
3 correct?

4 A. Absolutely.

5 Q. And in fact you asked Aramark to meet with these  
6 individuals as well; correct?

7 A. Correct.

8 Q. And you asked Aramark to meet with these individuals  
9 prior to August 2010; is that correct?

10 A. Correct.

11 Q. Did you ask them to meet with these individuals after  
12 August 2010?

13 A. No.

14 Q. Do you know if Aramark was meeting with these  
15 individuals after August 2010?

16 A. I don't recall. They may have.

17 Q. Now there were minutes that were shown to you of  
18 certain meetings that took place after August 2010; is  
19 that correct?

20 A. Yes.

21 Q. And on the agenda is listed kosher?

22 A. Yes.

23 Q. And do you know why the agenda lists kosher? Or  
24 kosher update, something to that effect?

25 A. Again, we continued talking about, you know,

Mr. Landeen - Cross - Mr. Mehlman

1 contingency plans. We were very concerned that if  
2 Jonathan decided to get up and leave that we needed to be  
3 ready to provide our guests with a Glatt Kosher product

4 Q. So even though you knew there was an injunction in  
5 place, it was still important as the vendor services  
6 operations manager at QBC to insure that there'd be  
7 kosher food served at the ballpark; is that correct?

8 MR. TOKAYER: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: Correct.

11 Q. And that was the bulk of the conversations that you  
12 had with Aramark during those meetings post to August  
13 2010; is that correct?

14 MR. TOKAYER: Objection.

15 THE COURT: Sustained as to form.

16 Q. Were those the purpose of your conversations  
17 referencing Kosher Sports after August 2010?

18 MR. TOKAYER: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: Yes.

21 Q. And when you asked at a meeting of which minutes are  
22 in front of you, M. Landeen to relay message re kosher  
23 not in breach with Aramark, did you ask Aramark whether  
24 Kosher Sports was in breach?

25 A. Yes.

Mr. Landeen - Cross - Mr. Mehlman

1 Q. And what was the reason that you asked Aramark  
2 whether Kosher Sports was in breach?

3 A. We had, Aramark had various issues with operational  
4 instances with Kosher Sports during the season --

5 MR. TOKAYER: Objection, hearsay.

6 THE COURT: I will not take it for the truth of  
7 the matter asserted.

8 Q. You can finish.

9 A. And the -- as well as were worried about Jonathan  
10 leaving, we were also wanted to make sure that he was not  
11 in breach with Aramark because again if Aramark  
12 terminated agreement, I wanted to know what's our next  
13 steps. And that's really --

14 Q. Now I want to refer you to Exhibit 33, it's in the  
15 binder in front of you. Mr. Tokayer asked you questions  
16 about whether it was decided that Mr. Tokayer -- I'm  
17 sorry, Mr. Katz, could not close a certain stand K428 of  
18 from the Pittsburgh series. Remember those questions?

19 A. Yes.

20 Q. Do you have Exhibit 33 in front of you?

21 A. Yes.

22 Q. The Mets give a reason why they did not want that  
23 promenade location closed?

24 A. Yes.

25 Q. And that reason is in the e-mail; isn't it?

Mr. Landeen - Cross - Mr. Mehlman

1 A. Correct.

2 Q. And what is the reason that QBC got involved and that  
3 they didn't want, the stadium they didn't want the  
4 promenade closed?

5 A. It was from a customer service perspective, we didn't  
6 want people not being able to who were sitting in one  
7 section have to walk all the way across the concourse to  
8 get a kosher product. It was more of a convenience for  
9 our customers.

10 Q. Because coming to Citi Field is about fans, about the  
11 guests; correct?

12 MR. TOKAYER: Objection.

13 THE COURT: Sustained.

14 Q. Is coming to Citi Field about catering to the fans?

15 MR. TOKAYER: Objection.

16 THE COURT: Sustained.

17 MR. MEHLMAN: Grounds? I'll rephrase the  
18 question, I don't need the grounds I'm sorry, your Honor.

19 THE COURT: I'm not sure what, it's objection  
20 as, sustained as to form.

21 MR. MEHLMAN: I'll rephrase.

22 Q. It's an essential part of your job to insure that the  
23 fans are happy; correct?

24 A. Yes.

25 Q. And that they're provided with the food and the fare

Mr. Landeen - Cross - Mr. Mehlman

1 they are coming to the ballpark for?

2 MR. TOKAYER: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: Yes.

5 Q. And you were concerned that if they shut this down,  
6 there'd be complaints from the fans; is that correct?

7 A. Yes.

8 Q. And I'm sure you deal with complaints from the fans  
9 every single day, don't you Mr. Landeen?

10 A. I deal with all of them.

11 Q. And your job is to try to insure that there aren't  
12 that many complaints from the fans; is that right?

13 A. Yes.

14 MR. MEHLMAN: Give me a moment, your Honor.

15 (Pause)

16 Q. Mr. Landeen, you were asked early in your testimony  
17 regarding the Aramark usage agreement; is that correct?

18 MR. MEHLMAN: Two quick questions if I could  
19 Mr. Katz --

20 THE COURT: Mr. Katz is here.

21 MR. MEHLMAN: Thank you.

22 THE COURT: Mr. Katz could you step outside,  
23 please.

24 (Pause)

25

Mr. Landeen - Redirect - Mr. Tokayer

1 REDIRECT EXAMINATION

2 BY MR. TOKAYER:

3 Q. Are you aware that it was QBC that sent Mr. Katz --

4 MR. TOKAYER: Oh, can I call Mr. Katz back in?

5 THE COURT: You may.

6 (Pause)

7 THE COURT: Unless you're going to be asking  
8 about the usage agreement.

9 (Pause)

10 Q. Wasn't it true that prior to when this lawsuit was  
11 commenced it was QBC that terminated Kosher Sports  
12 agreement; are you aware of that?

13 A. I'm not aware of that.

14 Q. Are you aware of the letter from Mr. Denniston to  
15 Kosher Sports terminating Kosher Sports' agreement?

16 MR. MEHLMAN: Objection, relevance.

17 THE COURT: I'm sorry. Which agreement are we  
18 talking about?

19 MR. TOKAYER: The Mets terminating Kosher  
20 Sports' agreement with QBC.

21 THE COURT: I believe this witness said he  
22 didn't know.

23 MR. TOKAYER: If he's not familiar with, it was  
24 actually a letter from Mr. Denniston to Kosher Sports  
25 terminating the QBC agreement?

Mr. Landeen - Redirect - Mr. Tokayer

1 THE COURT: Are you familiar with that?

2 THE WITNESS: No, that wouldn't be my  
3 department.

4 Q. Were you familiar with the fact that Mr. Katz in this  
5 lawsuit is fighting that termination?

6 MR. MEHLMAN: Objection.

7 THE COURT: I'll allow it.

8 THE WITNESS: Honestly I couldn't tell you.

9 Q. Did you ever ask Mr. Katz why he moved in court for  
10 an injunction if he was intending to leave Citi Field?

11 MR. MEHLMAN: Objection, assuming a fact.

12 THE COURT: Overruled.

13 THE WITNESS: Did I ever ask him?

14 MR. TOKAYER: Yeah.

15 A. No.

16 MR. TOKAYER: I have no further questions of  
17 this witness.

18 THE COURT: All right. Thank you very much,  
19 you're excused Mr. Landeen. We will break for lunch.  
20 Let's resume at 2:00 o'clock, will that give everyone  
21 enough time?

22 MR. TOKAYER: Yes, your Honor.

23 THE COURT: All right. And we have three  
24 witnesses this afternoon, well that's just plaintiff's.

25 MR. FIELD: Judge, we have two witnesses this



Mr. Landeen - Redirect - Mr. Tokayer

1 afternoon. One of those scheduling conferences or  
2 telephone calls that referenced when we were discussing  
3 Mr. Howard's testimony the possibility that it would be  
4 stipulated to, we raised the issue of three witnesses and  
5 you directed that we bring Mr. Kleckner and Mr. Funk who  
6 are here. Mr. Grey was excused from the hearing that was  
7 scheduled back --

8 THE COURT: So that was, that was back in June.  
9 That was not for today, and it was for the specific issue  
10 that was raised about the soccer game for which Aramark,  
11 the Aramark witnesses were needed. He was not excused  
12 for today.

13 MR. FIELD: Well I advised counsel that we were  
14 proceeding with the two and nobody objected, earlier this  
15 week when I told them that. So I'm just -- when you said  
16 there's three, there's only two outside is my point.

17 THE COURT: Mr. Grey is the missing witness?

18 MR. FIELD: Yes, your Honor.

19 THE COURT: Well how soon can he get here?

20 MR. FIELD: I don't know the answer to that,  
21 but I will check at lunch.

22 THE COURT: I take it we cannot stipulate to  
23 his testimony?

24 MR. TOKAYER: Correct.

25 THE COURT: Was he deposed?

Mr. Landeen - Redirect - Mr. Tokayer

1 MR. TOKAYER: No.

2 THE COURT: And --

3 MR. FIELD: As you heard --

4 THE COURT: -- Mr. Field when did you advise  
5 plaintiff's counsel that you would not be producing  
6 Mr. Grey today?

7 MR. FIELD: The second or third time was  
8 yesterday when I personally did it by facsimile. My  
9 colleague Mr. Brennan (ph) who has been on this case more  
10 than I, for the duration, I saw at least two e-mails to  
11 plaintiff's counsel which I was copied on. Earlier, the  
12 last week before he left on vacation so there were  
13 multiple times, nobody ever said no we have to have him.

14 As we suggested to your Honor, we had the  
15 discussion in June Mr. Grey's involvement here is de  
16 minimis. It's that one meeting, all you heard is his  
17 testimony was is how that January 6th meeting which  
18 apparently was recorded and Mr. Kleckner is here. Mr.  
19 Kleckner is much more knowledgeable. Mr. Grey at best  
20 would be duplicative on a very limited issue.

21 THE COURT: Well I had, I had indicated in an  
22 earlier ruling that the plaintiff while not being  
23 precluded from using the tape for any purpose, would be  
24 precluded from using it as affirmative evidence and could  
25 it use it only for impeachment purposes. Would both

Mr. Landeen - Redirect - Mr. Tokayer

1 sides be willing to have that, I think that tape may be  
2 in evidence as it is, but can we have that in lieu of Mr.  
3 Grey's testimony?

4 MR. TOKAYER: Can we discuss that over lunch?

5 THE COURT: No. Because we need to know  
6 whether it's going to be necessary to get Mr. Grey here  
7 and I hear from Mr. Field that at least a week ago  
8 plaintiff's counsel was advised that he wasn't being  
9 produced. So this should have been resolved before  
10 today.

11 MR. MEHLMAN: Your Honor, I want to make clear  
12 the tape was moved into evidence, I made clear only for  
13 impeachment purposes. The Court issued a ruling based  
14 upon a motion that was made that the tape would only be  
15 allowed to be used for impeachment purposes and it's  
16 QBC's position that the tape --

17 THE COURT: So you wouldn't stipulate to that  
18 coming in for any other purpose.

19 MR. MEHLMAN: No, I would not. I would not.

20 MR. FIELD: Judge, at this time could we get  
21 maybe an agreement that the only reason that Mr. Grey  
22 would possibly be necessary is to discuss that January  
23 6th meeting that I've been hearing about today which  
24 Mr. Kleckner was also in the meeting, you're going to  
25 hear from him and again if Mr. Kleckner's testimony it

Mr. Landeen - Redirect - Mr. Tokayer

1 may not be necessary to bring another person in to say  
2 the same thing about the same meeting.

3 THE COURT: But if it is then it's going to be  
4 late in the day and you're going to tell me that you  
5 can't get Mr. Grey in.

6 MR. FIELD: I'll check but at the pace this is  
7 going anyway with some of the examination here, I'm not  
8 sure Mr. Grey is going to be reached today that's another  
9 concern I have. Maybe we can get some representation  
10 from the attorney that he will be reached, all three will  
11 be finished today if I do get him down here.

12 THE COURT: Well I have no reason to think we  
13 won't finish today if in fact we only have two other  
14 witnesses other than Mr. Grey because I had said that we  
15 were going to, if we need to go beyond normal business  
16 hours we will. So I would think that we're going to be  
17 finished with the other witnesses no later than 5:00  
18 o'clock.

19 MR. FIELD: The other two by five is that what  
20 I heard?

21 THE COURT: Yes.

22 MR. FIELD: Okay.

23 THE COURT: If we start at 2:00 o'clock and Mr.  
24 Tokayer had indicated he expects their direct, the direct  
25 of each to be one hour and the cross examination probably

Mr. Landeen - Redirect - Mr. Tokayer

1 won't exceed 30 minutes I would guess, maybe even less.

2 Mr. Tokayer did you receive a notice a week ago  
3 that Mr. Grey was not going to be produced?

4 MR. TOKAYER: I really don't recall. I have  
5 received a lot of e-mails over the time. I've never  
6 indicated that Mr. Grey would not be introduced, we  
7 exchanged witness lists. I PDF'd it to counsel.

8 THE COURT: Well whether you said he --

9 MR. TOKAYER: I never, never ever said that Mr.  
10 Grey was not going to be called and he's on my witness  
11 list.

12 THE COURT: Were you told that he wasn't --  
13 were you told in substance that the other, that the other  
14 Aramark witnesses were being produced and he was not?

15 MR. TOKAYER: If he has the letters and the  
16 e-mails, I'll look at them. I don't recall.

17 MR. FIELD: No, there's no doubt. I said --  
18 and I personally put the letter in the fax machine  
19 yesterday.

20 MR. TOKAYER: Yesterday.

21 MR. FIELD: And I --

22 THE COURT: Well that's the -- I'm not talking  
23 about yesterday.

24 MR. TOKAYER: That's yesterday.

25 THE COURT: I'm talking about --

Mr. Landeen - Redirect - Mr. Tokayer

1 MR. FIELD: And last week undoubtedly  
2 Mr. Brennan sent e-mails.

3 THE COURT: When does Mr. Grey's meeting end, I  
4 accommodated Ms. -- well when does his meeting end?

5 MR. FIELD: I'm not sure what your question is?  
6 When does Mr. Grey's meeting end?

7 THE COURT: Did you say that Mr. Grey is in a  
8 series of meetings?

9 MR. FIELD: No, I said Mr. Grey -- from the  
10 testimony we've heard today, his only involvement in this  
11 case is that one January 6th meeting which he and  
12 Kleckner were at. Kleckner will testify about it, Mr.  
13 Katz is -- it's duplicative at best. If you want him to  
14 come in and say the same thing about the same meeting so  
15 be it. But I would think counsel would say they'd go  
16 with Kleckner's testimony. They've deposed Kleckner  
17 twice, they know what he's going to say about that  
18 meeting.

19 UNIDENTIFIED SPEAKER: Mr. Kleckner was not at  
20 that portion of the meeting that Mr. Grey --

21 THE COURT: That's my recollection. Why don't  
22 you get Mr. Grey here. Mr. Tokayer had indicated his  
23 testimony will be 15 minutes. If we need to take him out  
24 of turn, we'll take him out of turn. Get him in and out  
25 quickly.

Mr. Landeen - Redirect - Mr. Tokayer

1 MR. FIELD: I'm certain -- I want to get all  
2 the three people, but I don't want not to finish, these  
3 guys have been sitting here since 8:30 this morning.

4 THE COURT: All right. Get him here. I'm not  
5 pleased with this lack of focus on this issue, but my  
6 previous ruling dealt specifically with the scheduling  
7 difficulties created by the fact that there was a soccer  
8 match and I had said that if he is needed we would then  
9 put it over until the second day of the hearing. When I  
10 adjourned it I indicated to counsel that at this point  
11 we're going to go as long as it takes today to get it  
12 finished and Mr. Grey was not excused. I'm sorry that  
13 that wasn't communicated to you properly.

14 All right. I'll see you at 2 o'clock.

15 (Luncheon recess)

16 MR. MEHLMAN: Your Honor, before the next  
17 witness takes the stand --

18 THE COURT: Please be seated.

19 MR. MEHLMAN: -- I'd like to put something on  
20 the record. I could just be seated as I go on the  
21 record.

22 There was an issue during Mr. Landeen's  
23 testimony regarding November 2, 2010 minutes pursuant to  
24 an agenda of a meeting. Initially I had not noticed that  
25 there were not minutes attached to the November 2, 2010,

Mr. Landeen - Redirect - Mr. Tokayer

1 the actual minutes. During the break I had Mr. Landeen  
2 stay here, reach out to who he could reach out to clarify  
3 the reason behind it.

4 This is the clarification and Mr. Landeen has  
5 the e-mails to support it on his --

6 THE COURT: This relates to the cross motion;  
7 correct?

8 MR. MEHLMAN: No, it doesn't relate to the  
9 cross motion. It relates to the fact that I don't want  
10 Mr. Tokayer expressly kept the hearing open and Mr.  
11 Landeen's testimony open arguing or --

12 THE COURT: Well he purported to.

13 MR. MEHLMAN: Right, purported to, November  
14 2nd. I just want to clarify for the record so it's  
15 clear, and I kept Mr. Landeen here just so that there  
16 were no open issues at all.

17 The November 2nd, 2010 agenda is referenced in  
18 Exhibit 36 and it references kosher. The October 12,  
19 2010 minutes which are Exhibit 34 are actually the  
20 November 2nd minutes. They were e-mailed as the November  
21 2nd e-mail -- as the November 2nd minutes and they were  
22 e-mailed inappropriately labeled October 12, 2010. We  
23 then went back to find out if there were in fact minutes  
24 for October 12, 2010 and there are minutes for October  
25 12, 2010, they do not reference kosher at all. The word



Mr. Landeen - Redirect - Mr. Tokayer

1 kosher is not in there at all and that's why they would  
2 not have been picked up on the ESI. The e-mails --

3 THE COURT: I thought none of them were picked  
4 up on the ESI.

5 MR. MEHLMAN: None of them were picked up on  
6 the ESI but that one for sure would have never been  
7 picked up, we went back again a second time to try to  
8 find even hard copies. But the reference is, is the  
9 October 12th minutes according to the e-mail ledger that  
10 was sent were actually the minutes from November 2nd and  
11 they referenced kosher and there is a, with reference to  
12 some sort of kosher, and the October 2010, the mid-  
13 October 2010 minutes we could produce as well, there's  
14 nothing on kosher on it. And the e-mails in which they  
15 were sent evidencing this mistake in delineation on it,  
16 are available by e-mail as well.

17 I had Mr. Landeen pull it up on his iPad and we  
18 could forward it to the court and have them printed out.  
19 The reason that I'm raising this is that Mr. Landeen's  
20 here, I want any issues that Mr. Tokayer has referencing  
21 this hearing I want to resolved so there's no argument  
22 that any evidence or any documents referenced here,  
23 referencing this hearing has not been produced been  
24 produced prior to the hearing.

25 THE COURT: Well you may well want to do that

Mr. Landeen - Redirect - Mr. Tokayer

1 but I have a different agenda and that is to do this  
2 contempt hearing. If you are right then there is nothing  
3 further to question him about because there aren't any  
4 other meetings referencing kosher. I mean does he have  
5 actual knowledge of this or?

6 MR. MEHLMAN: He has knowledge via the e-mails  
7 that he received.

8 THE COURT: Have you provided Mr. Tokayer with  
9 those e-mails?

10 MR. MEHLMAN: I have them on his iPad. I did  
11 not, could not find a Kinko's where we could forward to  
12 to print out. I would ask that if the court's permission  
13 if we could forward them to the clerk to be printed out.  
14 The reason I kept Mr. Landeen here is so that if Mr.  
15 Tokayer has any further questions he can question Mr.  
16 Landeen so we could resolve that issue that I know he's  
17 going to raise or he's appearing to raise during the  
18 course of his direct examination. That's why I told Mr.  
19 Landeen not to go back to his office, but to stay here in  
20 case he could be questioned again.

21 THE COURT: Well if you want to forward those  
22 e-mails to my law clerk, he can print them out, but I'd  
23 like to proceed with the contempt hearing.

24 MR. MEHLMAN: And I will keep Mr. Landeen here  
25 in case Mr. Tokayer would like to recall him to question

178

Mr. Landeen - Redirect - Mr. Tokayer

1 him regarding those e-mails. With regard to the contempt  
2 hearing I want to make it clear that he has full, fair  
3 opportunity to cross examine or examine Mr. Landeen  
4 referencing any of the documents.

5 MR. TOKAYER: Your Honor, I believe this just  
6 exacerbates the problem because those e-mails were not  
7 produced. E-mails that purport to be the conveyance of  
8 that minutes and agenda.

9 THE COURT: All right. You both made your  
10 record now and this, as far as I'm concerned, goes to the  
11 cross motions for alleged discovery violations. I would  
12 like to proceed with this hearing.

13 Where did Mr. Mehlman go?

14 UNIDENTIFIED SPEAKER: He's directing the --

15 THE COURT: I told him to give it to my law  
16 clerk. He could e-mail it to my law clerk.

17 UNIDENTIFIED SPEAKER: He's bringing my e-mail  
18 address to the --

19 MR. MEHLMAN: Your Honor, Mr. Landeen's the one  
20 who is going to forward them.

21 (Pause)

22 THE COURT: All right. Let's proceed with the  
23 next witness.

24 MR. TOKAYER: Kosher Sports calls Mr. Funk.

25 (Witness takes the stand)

Mr. Funk - Direct - Mr. Tokayer

1 THE CLERK: Please state your full name and  
2 Spell your last name for the record?

3 MR. FUNK: Thomas Funk, F-u-n-k.

4 THE COURT: Please be seated. Mr. Tokayer you  
5 may proceed.

6 T H O M A S F U N K

7 having been first duly sworn, was examined and  
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. TOKAYER:

11 Q. Good afternoon, Mr. Funk.

12 A. Good afternoon.

13 Q. Are you ready to proceed?

14 A. Sure.

15 Q. When did you start working for Aramark?

16 A. July 2005.

17 Q. And at that time where were you stationed?

18 A. Lincoln Financial Field, Philadelphia.

19 Q. And you eventually become the director of operations  
20 there?

21 A. Yes, I did.

22 Q. Are you aware that Kosher Sports had a concession at  
23 Lincoln Financial Field, Philadelphia, while you were  
24 stationed there; correct?

25 A. Correct.

Mr. Funk - Direct - Mr. Tokayer

1 Q. In fact you signed the agreement between Kosher  
2 Sports and Aramark, right?

3 A. One of them at one point, yes.

4 Q. Has Aramark asked Kosher Sports to operate at  
5 Saturday events at Lincoln Financial Field?

6 A. Yes.

7 Q. When did you move to Citi Field?

8 THE COURT: I'm sorry? Who asked that?

9 MR. TOKAYER: Aramark asked Kosher Sports.

10 Q. Since -- I'm sorry. When did you move to Citi Field?

11 A. January 2009.

12 Q. And you report directly to the resident district  
13 manager at Citi Field?

14 A. Correct.

15 Q. And that was Rich Johns initially and then Scott  
16 Kleckner; right?

17 A. Correct.

18 Q. When did Mr. Kleckner become the resident district  
19 manager at Citi Field?

20 A. I believe February 2010.

21 Q. And you've heard some testimony but since you're the  
22 Aramark representative, is it true that Mr. Kleckner  
23 reports to Mr. Wiegert and that Mr. Wiegert reports to  
24 Mr. Westboro?

25 A. Correct.

Mr. Funk - Direct - Mr. Tokayer

1 Q. As early as the spring of 2009, you Mr. Funk knew  
2 that Kosher Sports intended to operate on Friday and  
3 Saturdays; correct?

4 A. Correct.

5 Q. And at that time you also knew that the Mets were  
6 against it; right?

7 A. When was that?

8 Q. Spring of 2009.

9 A. At that time I don't know the Mets maybe, I know that  
10 my bosses at the time were against it as well.

11 Q. I asked you about the Mets though.

12 A. Oh, yeah I think I recall that.

13 Q. In January of 2010 Mr. Kestenbaum of Kosher Sports  
14 made a request of Paul Asencio for Kosher Sports to  
15 operate on Fridays and Saturdays. Do you remember being  
16 aware of that request?

17 MR. MEHLMAN: Objection. He's leading this  
18 witness, your Honor. It's also an improper question.

19 THE COURT: All right. Objection sustained.

20 Q. Were you aware of a request by a David Kestenbaum of  
21 Kosher Sports made of Kosher Sports to operate on Fridays  
22 and Saturdays at Citi Field?

23 A. Made to who?

24 Q. Made to QBC?

25 A. Not specifically.

Mr. Funk - Direct - Mr. Tokayer

1 Q. I'd ask you to turn your attention to Exhibit 12,  
2 it's an e-mail from Kestenbaum to Mr. Barrick and from  
3 Barrick back to Mr. Kestenbaum.

4 Does that refresh your recollection of any  
5 requests made that you were aware of?

6 A. Yes.

7 Q. What, if anything, did you do upon learning of Mr.  
8 Kestenbaum's e-mail?

9 THE COURT: I'm sorry. But you're assuming a  
10 fact not in evidence.

11 MR. TOKAYER: I believe he just said that.

12 THE COURT: No, you asked whether it refreshed  
13 his recollection. So why don't you lay a foundation.

14 Q. Do you now recall that Mr. Kestenbaum asked QBC in  
15 January of 2010 to operate on Friday and Saturdays at  
16 Citi Field?

17 MR. MEHLMAN: Objection.

18 THE COURT: Sustained.

19 Q. Is your recollection now refreshed that you were  
20 aware of Mr. Kestenbaum's request made in Exhibit 12?

21 MR. MEHLMAN: Objection.

22 THE COURT: When did you first become aware of  
23 the request in Exhibit 12, if you did?

24 THE WITNESS: It was around that time,  
25 February, March time period I think.

Mr. Funk - Direct - Mr. Tokayer

1 Q. Do you remember at your deposition of being asked the  
2 following question and getting the following response, on  
3 Page 71, line 11 of Mr. Funk's deposition.

4 Mr. Tokayer -- I'm asking him if he was made  
5 aware of the request of Mr. Kestenbaum of QBC in January  
6 of 2010 to operate on Fridays and Saturdays?

7 "A I mean I do recall whether it was  
8 a conversation or e-mail, a request  
9 was made.

10 "Q Do you recall in January of 2010  
11 being aware that Mr. Kestenbaum had  
12 made a request of Paul Asencio to  
13 operate on Fridays and Saturdays?

14 "A I don't know if it was January,  
15 it could have been thereafter, but  
16 I'm sure. . yeah, yes. What, if  
17 anything do you recall doing upon  
18 becoming a" --

19 THE COURT: I'm sorry. Is that part of a  
20 question that's not even inconsistent with his testimony.

21 MR. TOKAYER: I think it's -- he said that he  
22 didn't remember, but now he's saying that it was around  
23 January or thereafter.

24 THE COURT: No, no. He testified that he first  
25 became aware of the request around February or March, and



Mr. Funk - Direct - Mr. Tokayer

1 there was nothing inconsistent in the testimony that you  
2 read. I'm not sure why you read that.

3 MR. TOKAYER: Well he said --

4 THE COURT: In his testimony he said he didn't  
5 know whether it was January or sometime thereafter.  
6 Please move on.

7 MR. TOKAYER: Okay.

8 Q. What, if anything, did you do upon hearing of Mr.  
9 Kestenbaum's request?

10 A. I don't remember.

11 Q. Isn't it true that you did nothing in response to  
12 that?

13 A. Could be, yeah.

14 Q. Now in May of 2010 you heard from an Aramark manager  
15 named Anthony, something about Kosher Sports wanting to  
16 operate on Fridays and Saturdays, do you remember that?

17 A. Yeah, that sounds familiar.

18 Q. Okay. And at that time you e-mailed Mr. Katz about  
19 what you had heard, right?

20 A. I don't recall if I e-mailed him.

21 Q. Let me show you Exhibit 18. If you'd look at the  
22 second page of Exhibit 18, there's an e-mail from you,  
23 Mr. Funk.

24 A. Right.

25 Q. To Mr. Katz. Does that refresh your recollection?

Mr. Funk - Direct - Mr. Tokayer

1 A. It does.

2 MR. TOKAYER: I'd move Exhibit 18 as evidence.

3 (Plaintiff's Exhibit 18 received in evidence)

4 Q. And do you remember asking Mr. Katz who approved this  
5 on the Mets side?

6 A. Yes.

7 Q. And do you recall getting Mr. Katz' response?

8 A. I do now.

9 Q. And within two minutes of receiving Mr. Katz'  
10 response, did you forward that response on to Paul  
11 Schwartz?

12 A. I did.

13 Q. And Exhibit 18 the e-mail that you wrote and received  
14 and forwarded on May 18, 2010. Is that the e-mail that  
15 you wrote, received and forwarded on May 18, 2010?

16 A. Yes.

17 Q. And who is Paul Schwartz?

18 A. Paul Schwartz is the senior director of Venue  
19 Services for the Mets, New York Mets.

20 Q. This action that we're here on today was commenced on  
21 June 9, 2010 with the taking out of the summons.

22 MR. MEHLMAN: Objection.

23 THE COURT: Ask a question.

24 Q. On June 11, 2010, did you become aware of this  
25 lawsuit?

Mr. Funk - Direct - Mr. Tokayer

1 A. I believe so, yes.

2 Q. How did you become aware of this lawsuit at that  
3 time?

4 MR. MEHLMAN: Objection.

5 MR. TOKAYER: Withdrawn.

6 Q. Did you receive an e-mail on that date, June 11,  
7 2010, informing you of the lawsuit?

8 A. I don't recall if it was an e-mail or if I had read  
9 something in the newspaper, I don't remember which one of  
10 those, but one of those did occur.

11 Q. I'm going to show you Exhibit 21. E-mail is from a  
12 Danielle Parillo, it's dated June 11, 2010 at 11:20 a.m.  
13 and it's to -- I'm sorry. The e-mail from Mr. Schwartz  
14 dated June 11, 2010 at 11:26 a.m., do you see that?

15 A. I do.

16 Q. Okay. Did you receive this e-mail from Mr. Schwartz  
17 on that day?

18 A. I did.

19 Q. Okay. And is Mr. Schwartz forwarding for your  
20 information an e-mail that he received from Danielle  
21 Parillo?

22 A. Is he forwarding me the information?

23 Q. Is he forwarding to you an e-mail from Danielle  
24 Parillo on that same date?

25 A. Yes.

Mr. Funk - Direct - Mr. Tokayer

1 MR. TOKAYER: I'd like to move Exhibit 21 in  
2 evidence, your Honor.

3 THE COURT: Any objection?

4 MR. MEHLMAN: No.

5 THE COURT: Received.

6 (Plaintiff's Exhibit No. 21 received in evidence)

7 Q. Now did you understand from this e-mail that the  
8 lawsuit by Kosher Sports involved its claim that the Mets  
9 were not letting Kosher Sports operate on Fridays and  
10 Saturdays?

11 MR. MEHLMAN: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: I'm sorry can you ask it again.

14 MR. TOKAYER: Sure.

15 Q. Did you understand from this e-mail that was  
16 forwarded to you by Mr. Schwartz that Kosher Sports had  
17 filed a lawsuit involving its claim that the Mets were  
18 not letting Kosher Sports operate on Fridays and  
19 Saturdays at Citi Field?

20 A. That was my understanding.

21 Q. And you have spoken about the lawsuit with  
22 representatives of the Mets; correct?

23 A. Correct.

24 Q. Paul Schwartz?

25 A. Yeah, I believe so.

Mr. Funk - Direct - Mr. Tokayer

1 Q. Mike Landeen?

2 A. Yes.

3 Q. Adam Barrick?

4 A. Yes.

5 Q. Pete Helfer?

6 A. Never directly to Pete, no.

7 Q. Paul Asencio?

8 A. Possibly.

9 Q. Do you remember your deposition telling me that you  
10 probably did speak to Mr. Helfer about the lawsuit as  
11 well?

12 A. I don't remember that, but.

13 Q. Let me just read you from your deposition, ask you if  
14 you were asked the following questions and received the  
15 following response. On Page 91 at 2: "Question: By the  
16 way before we leave it to the 120" - which is Exhibit 21  
17 to this hearing - "this time did you have any  
18 conversation with the Mets or any representatives thereof  
19 about the lawsuit commenced by Kosher Sports?"

20 You have a number of people you identified and on  
21 line 22 you say, "I would probably say Pete Helfer,  
22 whoever was involved with working with Kosher Sports on  
23 the corporate sales side. Whether it was in passing  
24 informally I'm sure there were conversations."

25 Do you remember being asked that question and giving

Mr. Funk ~ Direct ~ Mr. Tokayer

1 that response?

2 A. I do.

3 Q. Later on June 11th after you received Exhibit 21, did  
4 you recall the Mets asking you and Scott Kleckner and  
5 Scott Wiegert whether to let Kosher Sports continue to  
6 operate at Citi Field on June 22nd because it started the  
7 Mets' home stand?

8 A. I don't remember the date but I do remember the  
9 conversation.

10 Q. Okay. Invite your attention to Exhibit 22. Does  
11 that refresh your recollection as to the date that the  
12 Mets made that request of you, Mr. Wiegert and Mr.  
13 Kleckner?

14 A. I do or it does.

15 Q. So it was June 11th, it was later that day; correct?

16 A. Yeah, yes.

17 Q. And recall receiving this e-mail, Exhibit 22?

18 A. I do.

19 MR. TOKAYER: I'd like to move Exhibit 22 into  
20 evidence, your Honor.

21 THE COURT: Any objection?

22 MR. MEHLMAN: Just the date once again, June  
23 11, 2010.

24 THE COURT: All right. Overruled and received.  
25 (Plaintiff's Exhibit No. 22 received in evidence)

190

Mr. Funk - Direct - Mr. Tokayer

1 Q. And in that e-mail Mr. Funk the Mets also asked  
2 Aramark what actions Aramark's legal department should be  
3 taking, right?

4 A. Yes.

5 Q. Were you aware that the Mets also, at this time, were  
6 seeking to coordinate with Aramark on a press release in  
7 response to the lawsuit?

8 A. I'm not sure about a press release.

9 Q. Direct your attention to Exhibit 24 of your binder.  
10 Do you know who David Freireich is?

11 A. I do.

12 Q. And who is Mr. Freireich?

13 A. I believe he's the director of public relations or  
14 marketing for Aramark.

15 Q. And who is a Danielle Parillo, does she have the same  
16 position at the Mets?

17 A. Correct.

18 Q. Okay. And you recall receiving this information from  
19 Mr. Freireich on or about June 17, 2010?

20 MR. MEHLMAN: Objection.

21 THE COURT: I'm sorry. Receiving what  
22 information?

23 MR. TOKAYER: Information contained in Exhibit  
24 24.

25 THE COURT: This witness isn't cc'd in the e-

Mr. Funk - Direct - Mr. Tokayer

1 mail.

2 MR. TOKAYER: Correct. But he claims --

3 THE COURT: Read it to yourself and then ask a  
4 specific question.

5 (Pause)

6 Q. Did you -- do you recall Mr. Freireich providing you  
7 with the proposed press release contained in Exhibit 24?

8 A. I remember reading it. I don't know who -- Dave may  
9 have sent it, but I do remember seeing it.

10 MR. TOKAYER: I'd like to move Exhibit 24 into  
11 evidence.

12 THE COURT: Any objection.

13 MR. MEHLMAN: Yes, your Honor. I don't think  
14 it's appropriate to move that into evidence.

15 THE COURT: Sustained.

16 Q. What information did you get from Mr. Freireich on,  
17 with respect to this?

18 A. This e-mail?

19 Q. Yes.

20 A. I don't remember specifically what it was. It might  
21 have been a forwarded note about this e-mail itself. I  
22 don't remember the exact form, I just remember seeing the  
23 information that's here.

24 Q. Right.

25 MR. TOKAYER: Again, I'd move for Exhibit 24



Mr. Funk - Direct - Mr. Tokayer

1 into evidence as a document the even though he's not cc'd  
2 on he was aware of.

3 THE COURT: Well he said he was aware of a  
4 press release.

5 MR. TOKAYER: Proposed press release which is  
6 what Mr. Parillo is providing to Aramark.

7 THE COURT: Is there an objection?

8 MR. MEHLMAN: Same objection, your Honor.

9 THE COURT: Sustained.

10 Q. You were aware in June of 2010 that the Mets were  
11 providing a proposed press release to Aramark for their  
12 review; correct?

13 A. Correct.

14 Q. Do you remember seeing a news article where the Mets  
15 were quoted as saying that it was Aramark and not the  
16 Mets who were not letting Kosher Sports operate on Friday  
17 and Saturday?

18 A. I do.

19 Q. And did you agree with that article?

20 A. I did not.

21 Q. And which part of the article did you not agree with?

22 A. I think it's something about Aramark providing carts,  
23 if I -- I don't remember the exact term. I think it said  
24 that we wouldn't allow, Aramark wouldn't provide carts  
25 which is what -- I don't remember the exact language on

Mr. Funk - Direct - Mr. Tokayer

1 it, but there was a piece of their statement that I  
2 didn't agree with.

3 Q. Let me see if I can refresh your recollection.

4 A. Thank you.

5 Q. If you'd look at Exhibit 29. The bottom e-mail is  
6 from you to Mr. Schwartz; correct? Dated August 14, 2010  
7 at 10:22 p.m.

8 A. Correct.

9 Q. And you're providing them with an article by a Janon  
10 Fischer (ph)?

11 A. Yes.

12 Q. Okay. Is that the article that you saw?

13 A. Yes.

14 Q. If you recall that you saw where the Mets were quoted  
15 as saying that it was Aramark not the Mets who were not  
16 letting Kosher Sports operate on Friday and Saturday;  
17 correct?

18 A. Correct.

19 Q. Okay. And you didn't agree with that part of the  
20 article that said that Aramark had refused to allow  
21 Kosher Sports to operate on Friday and Saturday; right?

22 MR. MEHLMAN: Objection, leading the witness,  
23 misstating the response to the question, your Honor.

24 THE COURT: I don't think he did respond, but I  
25 already said once that you're not to lead this witness.

Mr. Funk - Direct - Mr. Tokayer

1 Q. Which part of that article did you not agree with?

2 Now that you have it front of you.

3 A. The part where it says Aramark has refused to supply  
4 the kosher vendor with carts for Fridays and Saturdays,  
5 the Mets said.

6 Q. Thank you. Which paragraph was this, on the second  
7 page?

8 A. Yes.

9 Q. You thought that wasn't true; correct?

10 A. I don't ever remember having dialogue around  
11 supplying carts.

12 Q. In fact when you first read this article you thought  
13 that the Mets were throwing Aramark under the bus, do you  
14 recall telling me that at your deposition?

15 MR. MEHLMAN: Objection.

16 THE COURT: Overruled. Did you say that at  
17 your deposition?

18 THE WITNESS: I did.

19 Q. And you forwarded this article to the Mets; correct?  
20 And to Paul Schwartz in particular with a copy to -- I'm  
21 sorry -- to Paul Schwartz in particular; correct?

22 A. Correct.

23 Q. Did Clint Eastwood agree with your assessment --

24 THE COURT: What's --

25 A. I don't know what Clint Eastwood agreed to.

Mr. Funk - Direct - Mr. Tokayer

1 Q. Did Clint Westbrook agree with your assessment that  
2 the Mets had thrown Aramark under the bus?

3 A. I believe he did.

4 Q. Let me show you Exhibit 28. It's an e-mail from  
5 Westbrook to Mr. Wiegert dated August 14, 2010. Do you  
6 see that?

7 A. I do.

8 Q. Is it the ordinary course of Aramark's business to  
9 send e-mails back and forth internally?

10 MR. MEHLMAN: Objection.

11 THE COURT: I'll allow it.

12 THE WITNESS: I'm sorry?

13 MR. TOKAYER: You may answer the question.

14 THE WITNESS: So is Aramark allowed to send e-  
15 mails to and from each other internally?

16 MR. TOKAYER: Yes.

17 THE WITNESS: Yes, we are.

18 Q. And is that the ordinary course of Aramark's  
19 business?

20 MR. MEHLMAN: Objection.

21 MR. TOKAYER: To send such e-mails.

22 THE COURT: I'll allow the question.

23 THE WITNESS: We do send e-mails back and  
24 forth, yes.

25 Q. And do the e-mails that are sent back and forth

Mr. Funk - Direct - Mr. Tokayer

1 ordinarily describe events contemporaneous with the e-  
2 mails that are being sent?

3 A. I'm not sure I understand the question.

4 Q. Do you simply send an e-mail, is it about something  
5 that happened at that time generally?

6 MR. MEHLMAN: Objection.

7 THE COURT: Are you suggesting that any time  
8 two business people communicate by e-mail that, if it's  
9 common to communicate by e-mail that that becomes a  
10 business record and an exception to the hearsay rule?

11 MR. TOKAYER: I believe that this e-mail is a  
12 business record and I'm going to move into evidence.

13 MR. MEHLMAN: Objection, your Honor. There's a  
14 much clearer foundation, a much more detailed foundation  
15 that Mr. Tokayer hasn't laid, and I don't believe any  
16 foundation could demonstrate that an e-mail is a business  
17 record.

18 THE COURT: Well I mean under certain --

19 MR. MEHLMAN: Not this e-mail. This e-mail is  
20 a business record. It's a communication between two  
21 people at Aramark. Would we then argue that all  
22 communications between --

23 THE COURT: Well that was my, that was my  
24 question to Mr. TOKAYER. I'll allow him to make his  
25 record. Finish making your record.

Mr. Funk - Direct - Mr. Tokayer

1 MR. TOKAYER: I would move Exhibit 28 into  
2 evidence.

3 THE COURT: For the truth?

4 MR. TOKAYER: For the fact that it was said.

5 THE COURT: For the fact that what was said?

6 MR. TOKAYER: That Mr. Westbrook and Mr.  
7 Wiegert discussed their view that Aramark -- that QBC had  
8 thrown Aramark under the bus?

9 MR. MEHLMAN: Objection.

10 THE COURT: Sustained.

11 Q. If you could turn to Exhibit 31, did you see a copy  
12 of this letter from me to Mr. Kleckner?

13 MR. MEHLMAN: Objection. What time period.

14 THE COURT: Yes, ask a more specific question.

15 Q. On or about August 27, 2010 did you get a copy of  
16 this letter from me to Scott Kleckner enclosing Judge  
17 Weinstein's order?

18 A. Did I receive a copy?

19 Q. Yes.

20 A. I don't recall receiving a copy. I did see it, but I  
21 didn't receive a copy.

22 Q. Okay. And you discussed it with Mr. Kleckner?

23 A. Yes.

24 Q. At or about that date?

25 A. Yeah, I don't know the date exactly.

Mr. Funk - Direct - Mr. Tokayer

1 MR. TOKAYER: I'd like to move Exhibit 31 into  
2 evidence.

3 UNIDENTIFIED SPEAKER: It's already in  
4 evidence.

5 THE COURT: I'm told it's already in evidence.

6 MR. TOKAYER: It's right here, thank you.

7 Q. Did there come a time when the Queens Ballpark  
8 Company sought to replace Kosher Sports with other kosher  
9 vendors?

10 A. Did there come a time?

11 Q. Yes.

12 A. Possibly.

13 Q. Do you recall meeting with other kosher vendors at  
14 QBC's request in order to replace Kosher Sports at Citi  
15 Field?

16 A. I do.

17 Q. Okay. And this occurred at the end of August 2010  
18 and the beginning of September 2010?

19 A. Somewhere, yeah, in there dates.

20 Q. And QBC was present during many of those meetings?

21 A. Yes, I believe they were.

22 Q. Aramark has weekly meetings with QBC's vendor  
23 services department; right?

24 A. Correct.

25 Q. And during the season as well during the off season;

Mr. Funk - Direct - Mr. Tokayer

1 correct?

2 A. Correct.

3 Q. Did the meetings stop after August 27, 2010, the date  
4 of the letter from me to Mr. Kleckner, which is Exhibit  
5 31?

6 A. Did the meeting stop happening?

7 Q. Yes.

8 A. No.

9 Q. Was Kosher Sports placed on the agenda of the weekly  
10 meetings that Aramark with the vendor services department  
11 during the off season between 2010 and 2011?

12 A. They were on.

13 Q. And was --

14 THE COURT: I'm sorry. I didn't hear that  
15 answer.

16 THE WITNESS: They were on the agenda. Not  
17 every week, but the topic came up, yes.

18 Q. Kosher Sports was the topic of conversation at many  
19 of those weekly meetings?

20 A. Some, yes.

21 Q. Okay. And some of those conversations were reflected  
22 in the minutes of those meetings; right?

23 A. I believe they were, yes.

24 Q. And you would get the minutes in the ordinary course  
25 of your business?



Mr. Funk - Direct - Mr. Tokayer

1 A. Yeah, I believe we were e-mailed them.

2 Q. At some of the weekly meetings in November and  
3 December of 2010, did Aramark and the Mets discuss  
4 whether Kosher Sports was in breach of its agreement with  
5 Aramark?

6 A. In that time period?

7 Q. Yes.

8 A. Yes.

9 Q. And that occurred at least at the November 2nd  
10 meeting, November 11th meeting and the December 7th  
11 meeting; right?

12 MR. MEHLMAN: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: I don't remember the exact  
15 dates, but I do know that, again, there were  
16 conversations around the topic.

17 Q. At one meeting or more than one meeting?

18 A. It was a few sure. It wasn't one.

19 Q. Let me show you the minutes for December 7th, see if  
20 you recall it being a topic of that meeting, and that's  
21 Exhibit 39 in front of you.

22 A. I remember.

23 Q. Okay. So it was a topic of the December 7th meeting;  
24 correct? Kosher Sports being -- whether Kosher Sports  
25 was in breach of its agreement with Aramark; right?

Mr. Funk - Direct - Mr. Tokayer

1 A. It says it's not in breach.

2 Q. Right.

3 A. Yes.

4 Q. Whether or not it was in breach was discussed?

5 A. Okay, yes.

6 Q. Okay.

7 A. Thank you.

8 Q. And do you remember at your deposition testifying  
9 that was also the topic of conversation at the November  
10 2nd and the November 11th meeting?

11 A. I believe, yes, that's what it said.

12 Q. And was it your judgement that there was no grounds  
13 for termination of Kosher Sports at that time?

14 A. Correct.

15 Q. And that's what you and Mr. Kleckner discussed  
16 specifically?

17 A. Yes.

18 Q. Did Mr. Katz send you an e-mail on September 6th,  
19 2010 asking if it was okay for Kosher Sports to be  
20 permitted not to open its portable cart on the promenade  
21 level for the Pittsburgh series? Do you recall that?

22 A. I think so, yes.

23 Q. Let me show you Exhibit 33. And refer you to the  
24 second page, that's the e-mail from Mr. Katz to you on  
25 September 6th on that topic.

Mr. Funk - Cross - Mr. Mehlman

1 A. Okay.

2 Q. Now you responded on September 7th at 1:54 p.m. that  
3 it was not okay, do you remember that?

4 A. I'm sorry what was it, what was the date?

5 Q. On September 6th Mr. Katz asked you please let me  
6 know if you are okay with this and then the next day on  
7 September 7th of 2010 you told him, no. Do you remember  
8 that?

9 A. I remember saying no, I don't remember the date  
10 specifically.

11 Q. Let me show you to refresh your recollection. Okay.  
12 Do you recall being asked this following question and  
13 giving the following response in your deposition on May  
14 26, 2010. Page 150, line 25.

15 "Question: Let's go back to section 428. John  
16 asked that it be closed for the Pittsburgh series and you  
17 responded on the next day at 1:54 p.m.?

18 "Answer: Yes. That's what it says.

19 "Question: Did you grant his request at that  
20 time?

21 "Answer: No."

22 Do you recall being asked that question and giving  
23 that response?

24 A. Yes.

25 Q. Okay. And between Mr. Katz asking you on September

Mr. Funk - Cross - Mr. Mehlman

1 6th whether it was okay and your responding to him on  
2 September 7th at 1:54 p.m. it wasn't okay, you  
3 communicated with the Mets, right?

4 A. Yes, Paul Schwartz.

5 Q. And you forwarded Mr. Katz' e-mail to Mr. Schwartz;  
6 right?

7 A. Correct.

8 Q. And Mr. Schwartz responded that the Mets were not  
9 okay with the request from their perspective; right?

10 A. Correct.

11 Q. And you relayed -- and that was the response that you  
12 relayed to Mr. Katz without telling him that it was the  
13 Mets who had said no; correct?

14 A. Correct.

15 MR. TOKAYER: No further questions.

16 THE COURT: All right. Cross examination?

17 MR. MEHLMAN: Just briefly.

18 CROSS EXAMINATION

19 BY MR. MEHLMAN:

20 Q. Mr. Funk, was Aramark asked by the Mets to meet with  
21 other vendors that may want to sell their fare at Citi  
22 Field?

23 A. Yes.

24 THE COURT: I'm sorry. I didn't hear the  
25 question.

Mr. Funk - Cross - Mr. Mehlman

1 Q. Does Aramark -- was Aramark asked by the Mets to meet  
2 with other vendors who want to sell their fare at Citi  
3 Field?

4 A. Yes.

5 Q. Are those meetings constant and consistent throughout  
6 a season, all season usually?

7 MR. TOKAYER: Objection.

8 THE COURT: I'll allow it.

9 THE WITNESS: Yes.

10 Q. And do you know the reason why QBC or the Mets asked  
11 you to meet with other kosher vendors even though  
12 Mr. Katz and KSI were still operating at Citi Field?

13 A. I understood it that it was a contingent for a  
14 sponsorship agreement that the Mets were trying to fill.

15 Q. And Mr. Katz still operates in Citi Field; is that  
16 correct?

17 A. Correct.

18 Q. And he hadn't stopped operating in Citi Field since  
19 the beginning of this lawsuit; correct?

20 A. Correct.

21 Q. And did anyone from QBC, from the Mets, ever ask you,  
22 as far as you know, to terminate Mr. Katz' Aramark  
23 contract?

24 A. No.

25 Q. Did anybody from the Mets or QBC or anyone related to

Mr. Funk - Cross - Mr. Mehlman

1 the Mets ever ask Aramark, as far as you know, to  
2 terminate Aramark's contract with KSI?

3 A. No.

4 MR. MEHLMAN: Nothing further.

5 THE COURT: All right. You may step down.

6 Mr. Tokayer, you can call your next witness.

7 MR. TOKAYER: Mr. Grey, please.

8 THE COURT: Is Mr. Grey here?

9 MR. FIELD: Mr. Grey is coming at 4:00 o'clock.

10 THE COURT: All right.

11 MR. FIELD: I asked the question before about  
12 how long you were going to be with them, the other two.  
13 I have two of them have been here since 8:30. And I  
14 asked earlier if --

15 THE COURT: You have two, we should only have  
16 one more.

17 MR. FIELD: Yes, now I have one.

18 THE COURT: All right. Mr. Kleckner is your  
19 other remaining witness?

20 MR. TOKAYER: Yes.

21 THE COURT: All right. Let's call Mr.  
22 Kleckner.

23 MR. TOKAYER: Can we just take a quick break.

24 THE COURT: We've only be going for less than  
25 an hour since the lunch break.

Mr. Kleckner - Direct - Mr. Tokayer

1 MR. TOKAYER: It will just be a moment.

2 THE COURT: You really need to use the  
3 facilities now? All right. I'm going to stay on the  
4 bench so make it fast.

5 MR. TOKAYER: Okay. Thank you, your Honor.

6 THE COURT: You both have to go?

7 (Pause)

8 MR. TOKAYER: Thank you, your Honor.

9 THE COURT: Are we back on the record?

10 MR. CLERK: We are. Should I swear in the  
11 witness?

12 THE COURT: Yes.

13 (Witness takes the stand)

14 MR. CLERK: If you could state your full name  
15 and then spell your last name?

16 MR. KLECKNER: Scott Eric Kleckner, K-l-e-c-k-  
17 n-e-r.

18 THE COURT: You may proceed.

19 MR. TOKAYER: Thank you, your Honor.

20 S C O T T K L E C K N E R

21 having been first duly sworn, was examined and  
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. TOKAYER:

25 Q. Good afternoon, Mr. Kleckner.

Mr. Kleckner - Direct - Mr. Tokayer

- 1 A. Hello.
- 2 Q. When did you start working at Aramark?
- 3 A. Less than five years ago.
- 4 Q. And you started at which stadium? Where were you
- 5 stationed?
- 6 A. Lincoln Financial Field in Philadelphia.
- 7 Q. How long were you at Lincoln Financial Field in
- 8 Philadelphia?
- 9 A. About a year and half, about two seasons.
- 10 Q. Was Mr. Funk there while you were there?
- 11 A. Yes.
- 12 Q. Now was Kosher Sports operating at Lincoln Financial
- 13 Field while you were there?
- 14 A. Yes.
- 15 Q. When did you begin the duties at Citi Field?
- 16 A. It's been over a year now. It was before last
- 17 season.
- 18 Q. Sometime in the 2010?
- 19 A. Yeah, approximately January.
- 20 Q. And you are the resident district manager there;
- 21 correct?
- 22 A. Correct.
- 23 Q. And you have been since you, since January 2010?
- 24 A. Correct.
- 25 Q. Mr. Funk reports directly to you; correct?



Mr. Kleckner - Direct - Mr. Tokayer

1 A. Correct.

2 Q. And in the course of your duties, do you communicate  
3 with Mr. Funk on a regular basis?

4 A. Yes.

5 Q. Would you say on a daily basis?

6 A. Many times a day.

7 Q. And in the course of your duties as the resident  
8 district manager at Citi Field, you also communicate with  
9 the venue services department of QBC; right?

10 A. Correct.

11 MR. MEHLMAN: Objection. Is he going to be  
12 leading this witness as well, your Honor? It's not a QBC  
13 witness.

14 THE COURT: All right. Same ruling.

15 Q. Do you communicate with the venue services department  
16 at Citi Field?

17 A. Yes.

18 Q. How often would you say you communicate with the  
19 venue services department?

20 A. It depends, at the very least weekly.

21 Q. Would you say daily?

22 A. I would say at the very least weekly, sometimes not  
23 daily.

24 THE COURT: I'm sorry. I didn't hear the end,  
25 you said sometimes not daily or sometimes daily?

Mr. Kleckner - Direct - Mr. Tokayer

1 THE WITNESS: At least weekly, but not every  
2 day. During the season more.

3 Q. Remember taking a deposition in this case?

4 A. Yes.

5 Q. Do you remember the one that was taken in my office?

6 A. Yes.

7 Q. Do you remember being asked the following questions  
8 and giving the following responses.

9 "Question: Is the Mets venue service  
10 department, the department of the Mets that you  
11 communicate with most?

12 "Answer: Correct."

13 THE COURT: What page are we at?

14 MR. TOKAYER: 13, line 4 -- line 6.

15 THE WITNESS: Is this something that's in front  
16 of me or not?

17 MR. TOKAYER: No, this isn't.

18 THE WITNESS: Okay.

19 "Question: Is my Mike Landeen the head of that  
20 department?

21 "Answer: Correct.

22 "Question: Do you have weekly meetings with  
23 that department?

24 "Answer: Most weeks we meet.

25 "Question: Do you communicate with the venue

Mr. Kleckner - Direct - Mr. Tokayer

1 service department other than at weekly meetings?

2 "Answer: Yes.

3 "Question: Would you say on a daily basis?

4 "Answer: Most days."

5 MR. MEHLMAN: Objection, your Honor.

6 THE COURT: Overruled.

7 MR. MEHLMAN: How is that inconsistent with the  
8 witness's testimony?

9 THE COURT: Overruled.

10 Q. Do you remember being asked those questions and  
11 giving those responses?

12 A. I recall being in your office for about eight hours,  
13 and I maintain that I meet with them at least on a weekly  
14 basis was my answer and still is.

15 Q. And in fact on most days you'd say -- you meet with  
16 them on most days in fact?

17 A. No, I do not say that. You say that. I say that I  
18 meet with them at least weekly and most days especially  
19 during the season I have some level of communication with  
20 them.

21 Q. And with whom at the venue services department do you  
22 communicate most predominately?

23 A. Most predominately Mike Landeen.

24 Q. Do you interact with others as well?

25 A. Correct.

Mr. Kleckner - Direct - Mr. Tokayer

1 Q. When you started your duties at Citi Field, did  
2 anyone from the Mets inform you of Kosher Sports' desire  
3 to operate on Fridays and Saturdays at that venue?

4 A. No.

5 Q. Did anyone make you aware of an e-mail from David  
6 Kestenbaum in January of 2010 requesting, on behalf of  
7 Kosher Sports, to operate on Friday and Saturdays at Citi  
8 Field?

9 A. I don't recall hearing that name before.

10 Q. Let me invite your attention to Exhibit 12 in the  
11 binder in front of you. This is documents in evidence,  
12 there's an e-mail from Mr. Kestenbaum to Mr. Barrick and  
13 Mr. Asencio dated February 19, 2010. And there's a  
14 response form Mr. Barrick to Mr. Kestenbaum and Mr.  
15 Asencio dated February 22, 2010. Do you see that?

16 A. I see it.

17 Q. Okay. Were you consulted before Mr. Barrick's  
18 response to Mr. Kestenbaum's e-mail?

19 A. I don't have a specific recollection of this.

20 Q. Did you become aware of Mr. Barrick's response after  
21 it was sent?

22 A. Again, I have no specific recollection of this chain  
23 of events.

24 Q. Now at some point you came to understand, did you  
25 not, that the Mets did not want Kosher Sports to operate

Mr. Kleckner - Direct - Mr. Tokayer

1 on Fridays and Saturdays?

2 A. Sorry what was the question?

3 Q. At some point did you become aware that the Mets did  
4 not want Kosher Sports to operate on Fridays and  
5 Saturdays?

6 A. From a newspaper article, yes.

7 Q. What was the date of that newspaper article?

8 A. Come on, Ira, I don't have it right in front of me.  
9 I don't recall dates. As I've told you before, this is a  
10 such piece of my world, I'm not going to know the dates  
11 of the newspaper articles.

12 Q. So --

13 A. Well, I can tell you the date that you know that  
14 you're asking me about, it's a month after I started a  
15 new job. I can tell you the newspaper article, I presume  
16 was after this. But I would rather answer questions I  
17 have direct knowledge of, than to speculate.

18 THE COURT: However, there are attorneys here  
19 who can make objections so just answer the question to  
20 the best of your ability and rely on counsel to make  
21 objections.

22 THE WITNESS: Okay. Understood. After -- I  
23 assume it was after this e-mail, so I imagine February,  
24 March, I don't recall.

25 Q. February/March of 2010?

213

Mr. Kleckner - Direct - Mr. Tokayer

1 A. Again, I don't have a specific recollection, but I'll  
2 say yes.

3 Q. And on June 11th of 2010 -- do you recall becoming  
4 aware of this lawsuit on June 11th, 2010?

5 A. I don't recall June 11th specifically, if that's the  
6 date of the newspaper article.

7 Q. I mean, that's the date of a number of e-mails to you  
8 on that date, so let me see if I can refresh your  
9 recollection. If you would turn to Exhibit 21. Did you  
10 get this e-mail on June 11th, 2010?

11 A. It appears I did, yes.

12 Q. And there's a reference to a New York Post inquiry,  
13 do you see that?

14 A. I do.

15 Q. Okay. And is this the article that you saw that made  
16 you understand that Kosher Sports was complaining about  
17 the Mets not letting them operate -- strike that.

18 Is this the article that from which you understood  
19 that it was the Mets' position that they did not want  
20 Kosher Sports to be operating at Citi Field on -- prior  
21 to Saturday?

22 A. No. This is an e-mail from the PR department, I  
23 presume before the article.

24 Q. You even knew it before?

25 A. Well, again, it's looking like they're looking for a

Mr. Kleckner - Direct - Mr. Tokayer

1 comment for an article deadline that was due that day.

2 So I assume the article was right after this.

3 Q. And did you have a discussion with anyone from the  
4 Mets on or about June 11, 2010 about the Mets not wanting  
5 Kosher Sports to operate at Citi Field on Friday and  
6 Saturday?

7 A. The way the question's been asked, I don't believe  
8 so. The conversations around the article would've been  
9 more about press coverage and less about the specifics, I  
10 presume.

11 Q. Do you remember being asked this question and giving  
12 this response on page 45, line 17:

13 "Question: Did you understand --"

14 THE COURT: I'm sorry, what page?

15 MR. TOKAYER: 45.

16 Q. "Question: Did you understand --"  
17 meaning you, Mr. Kleckner, "that the  
18 Mets did not want Kosher Sports to  
19 operate on Fridays and Saturdays on  
20 June 11th, 2010?"

21 Your answer was:

22 "Answer: I understood that's what  
23 the New York Post was reporting.

24 "Question: Did you have a discussion  
25 with anyone at the Mets about that on

Mr. Kleckner - Direct - Mr. Tokayer

1 June 11th, 2010 or shortly

2 thereafter?

3 "Answer: Within that time period,  
4 yes."

5 Do you recall being asked that question and giving  
6 that response?

7 A. The answer seems consistent with what I just said.

8 Q. Now, I bring your attention to Exhibit 31. Just for  
9 the record, did you get that fax from me on August 27th,  
10 2010?

11 A. Yes, I did.

12 Q. Okay. And did you provide it to your attorneys on  
13 that day?

14 A. Yes, I did.

15 Q. And if you'd look at Exhibit 32, is that your  
16 response to my letter?

17 A. Yeah. It appears it was the next day.

18 Q. Okay.

19 MR. TOKAYER: Is Exhibit 34 in evidence?

20 Yes, okay.

21 Q. Now, Exhibit 41 is another letter from me to you, Mr.  
22 Kleckner.

23 THE COURT: I'm sorry, what's the exhibit  
24 number now?

25 MR. TOKAYER: 41, it's an April 7th, 2011



Mr. Kleckner - Direct - Mr. Tokayer

1 letter.

2 Q. Did you receive that letter from me on August 7th,  
3 2011?

4 THE COURT: April.

5 Q. I'm sorry, April 7th, 2011.

6 A. Honestly I can't tell the difference between this and  
7 the other one, but it looks like I did, so I'll say yes.

8 Q. Okay. And is Exhibit 42 your response to my letter?

9 A. No, it is not. It's from my counsel.

10 Q. Oh, I'm sorry. Is Exhibit 40 your response? Sorry  
11 it's out of order.

12 A. No. That's an e-mail to Jonathan from me.

13 Q. Okay. And is it a response to my letter? No?  
14 What led you to write that?

15 A. Let me read it.

16 Q. Sure.

17 (Pause)

18 A. No. This is me reiterating conversations I'd had  
19 with Jonathan and advising him not to have you contact  
20 me, but to have you work through our attorneys.

21 Q. All right. Do you see my letter to you --

22 MR. TOKAYER: I'd like to move Exhibit 40 and  
23 Exhibit 41 and Exhibit 42 into evidence, Your Honor.

24 MR. MEHLMAN: 42 there's no foundation for,  
25 Your Honor.

217

Mr. Kleckner - Direct - Mr. Tokayer

1 THE COURT: Sustained as to 42. Any objections  
2 to 40 and 41?

3 MR. MEHLMAN: No.

4 THE COURT: Received.

5 (Plaintiff's Exhibit Nos. 40 and 41 received.)

6 Q. See the last sentence in Exhibit 40, you say, "In  
7 addition, as you're also aware, Aramark has a legal  
8 department and your attorney should direct all  
9 communications to assistant general counsel Dave Kwombat  
10 (ph) and not myself."

11 Does that refresh your recollection that you wrote  
12 this -- well, did you write this letter after receiving  
13 my letter? So did you write Exhibit 40 after receiving  
14 Exhibit 41?

15 A. I'd have to look.

16 Q. Sure.

17 (Pause)

18 A. It appears so, yes.

19 Q. And was Exhibit 40 in response to Exhibit 41?

20 A. No, it was not. It was an e-mail to Jonathan  
21 explaining conversations that we had had and also  
22 reiterating that I do not want to be contacted directly  
23 by you, as I am not an attorney.

24 Q. Okay. And did you direct the counsel to send Exhibit  
25 42?

Mr. Kleckner - Direct - Mr. Tokayer

1 A. No. What I do is I forward the matter to counsel. I  
2 don't direct counsel.

3

4 Q. After the Judge Weinstein's order in August of 2010,  
5 with the Mets seeking your help to line up another Kosher  
6 vendor so that they could tell John Katz to pound sand?

7 A. My answer to that would be you're paraphrasing a  
8 conversation I had with Jonathan, the actual direction  
9 from the Mets was to make sure we had a contingency in  
10 light of not having a kosher operator, which we cannot  
11 not have, and kosher operators serving our guests kosher  
12 food, but that certainly was not the specific direction  
13 of the Mets, no.

14 Q. At one or more of the weekly meetings in the fall of  
15 2010 specifically November and December, did you and QBC  
16 discuss whether Kosher Sports was in breach of its  
17 contract with Aramark?

18 A. Yes.

19 Q. And at those meetings, did Mr. Landeen or any other  
20 representative of QBC ask you to terminate Kosher Sports'  
21 relationship?

22 A. They did not.

23 Q. Was there any off season between 2010 and 2011  
24 seasons, that you and Mr. Landeen discussed terminating  
25 Kosher Sports?

Mr. Kleckner - Direct - Mr. Tokayer

1 A. We've absolutely discussed what would happen if  
2 either Kosher Sports terminated on their own or walked  
3 out, or if we terminated the contract, and what we would  
4 do at that point, yes.

5 Q. Now, did you and Mr. Katz meet face-to-face in  
6 January 2011?

7 A. I don't recall if that was the date. We definitely  
8 did meet in the off season.

9 Q. And it was a meeting between Mr. Gray and Mr. Katz  
10 that you came into?

11 A. Correct.

12 Q. And did you say to Mr. Katz at that meeting in  
13 January of 2011, that during the off season, despite the  
14 Judge's ruling, the Mets had asked you to try to find a  
15 vendor to replace Kosher Sports, so they could tell John  
16 Katz to pound the sand?

17 A. I don't think that's what I've said, but what I --  
18 I'm sure I communicated to Jonathan that I did not agree  
19 with the course he was taking. I didn't see any good  
20 outcome of suing my partner, the Mets, or going to the  
21 press. I advised him strongly against doing so. I  
22 advised him strongly against involving Aramark and I also  
23 was very up front with him and told him that we had been  
24 meeting with other kosher vendors, so that if it got to a  
25 point where he wasn't there, either by, you know, the

220

Mr. Kleckner - Direct - Mr. Tokayer

1 combined efforts of the Mets and Aramark or by himself,  
2 that we were starting to line up other vendors.

3 Q. So let me play up a tape of that -- a portion of that  
4 conversation.

5 (Pause)

6 MR. TOKAYER: And for -- Your Honor, I can hand  
7 out the transcripts of this particular track.

8 MR. MEHLMAN: Your Honor, the Court made it  
9 clear that if we were going to get a transcript of the  
10 entire conversation, that that would be the transcript  
11 that would be used in connection with the playing of the  
12 tapes. Mr. Tokayer refused to cooperate with QBC in  
13 making the necessary preparations.

14 We on our own, went to Transperfect Legal  
15 Solutions, we had it transcribed, conversations that are  
16 transcribed in full. We provided them to Mr. Tokayer,  
17 and we ask that those transcripts be used in connection  
18 with this matter, not the transcripts that Mr. Tokayer --

19 THE COURT: I'll follow those transcripts.

20 MR. TOKAYER: May I, Your Honor?

21 THE COURT: One moment. Let me get the QBC's  
22 version.

23 MR. MEHLMAN: I have a copy.

24 MR. UNIDENTIFIED: Is this a January exhibit?

25 THE COURT: This is a January one.

221

Mr. Kleckner - Direct - Mr. Tokayer

1 MR. MEHLMAN: I believe that you have that one,  
2 Judge.

3 MR. UNIDENTIFIED: I couldn't see --

4 THE COURT: No, isn't it in the box?

5 MR. UNIDENTIFIED: I don't believe I gave you  
6 the --

7 THE COURT: Oh. Okay. Yes, I have it, I'm  
8 sorry.

9 MR. MEHLMAN: Exhibit C.

10 THE COURT: Now which track are we --

11 MR. TOKAYER: It'll be track four, Your Honor.

12 (Pause)

13 MR. MEHLMAN: Which track are you playing?

14 THE COURT: Track four he said. Do you know  
15 where that starts? Do you have a cross-reference?

16 MR. MEHLMAN: "Kleckner telling me at some  
17 point," that's page 12, line 14.

18 THE COURT: Yes. Thank you.

19 MR. TOKAYER: His -- everybody ready, Your  
20 Honor?

21 THE COURT: Yes.

22 MR. TOKAYER: Yes.

23 (Taped conversation played)

24 THE WITNESS: I can't hear it.

25 (Pause)

Mr. Kleckner - Direct - Mr. Tokayer

1 MR. TOKAYER: Does that work? Okay.

2 (Taped conversation played)

3 Q. Is that your voice that's on that tape?

4 A. A terrible recording, but at the end I heard myself  
5 say expletive off, so that we could have something on the  
6 shelf. Other than that, because of the deceptive way in  
7 which Jonathan was recording it, I could hear his voice  
8 very clearly, but I could barely hear myself.

9 Q. Okay. Does that refresh your recollection that you  
10 said to Mr. Katz at that meeting in January 2011, that  
11 during the off season, despite the Judge's ruling, the  
12 Mets had asked you to find a vendor to replace Kosher  
13 Sports, so they could tell him to pound the sand?

14 A. No, it does not --

15 MR. MEHLMAN: Objection. Objection. It's not  
16 accurate. It's not an accurate reflection of the  
17 transcript.

18 THE COURT: The witness answered the question  
19 and the tape is in evidence, and the two transcripts are  
20 there for guidance for the Court.

21 Q. Now, did you and Mr. Katz have a telephone  
22 conversation in April of 2011?

23 A. We've had phone conversations. I presume you're  
24 talking about the phone conversation which he recorded --

25 Q. Yes, I am.

Mr. Kleckner - Direct - Mr. Tokayer

1 A. -- so I'll say yes.

2 Q. And did you say in that phone conversation that you  
3 had been pretty open with Mr. Katz off the record about  
4 the fact that you received -- wanted Aramark to terminate  
5 Kosher Sports' relationship and bring in somebody else?

6 A. That's not my recollection. But what I do know is I  
7 was very open with Jonathan Katz. He was somebody I  
8 considered a friend and somebody that I was trying to  
9 guide for making a terrible business mistake, which is  
10 what he did, and where we are now.

11 Q. Okay. Let me play the tape to you, it'll be track  
12 six, see if you recognize your voice.

13 THE COURT: I'm sorry. I need -- I assume that  
14 QBC wants me to also have their transcript available. Is  
15 that a separate document or part of the same document?

16 MR. MEHLMAN: It's a separate document. It's  
17 the Exhibit D, Your Honor. Do you want me to hand it up  
18 to the Court?

19 THE COURT: Yes, please.

20 MR. UNIDENTIFIED: I'd like a copy to follow  
21 along as well.

22 MR. MEHLMAN: Thank you. A moment, Your Honor.  
23 (Pause)

24 MR. TOKAYER: Are we ready?

25 THE COURT: No.



Mr. Kleckner - Direct - Mr. Tokayer

1 MR. MEHLMAN: No.

2 MR. TOKAYER: Okay.

3 (Pause)

4 THE COURT: Mr. Mehlman, track 6 begins where?

5 MR. MEHLMAN: I'm looking, Your Honor, just  
6 give me a second.

7 (Pause)

8 MR. MEHLMAN: Yes, Your Honor, page 8, line 10.

9 THE COURT: All right.

10 MR. MEHLMAN: Just (indiscernible).

11 MR. TOKAYER: Okay?

12 THE COURT: All right.

13 (Taped conversation played)

14 Q. Was that your voice, Mr. Kleckner?

15 A. Very much out of context, but yes.

16 Q. Okay. Let's hear it back one more time. I want to  
17 ask you a question about --

18 A. Okay.

19 MR. MEHLMAN: Objection, Your Honor. Is this  
20 for impeachment purposes?

21 THE COURT: It's being offered for impeachment  
22 purposes only.

23 MR. TOKAYER: Yes.

24 (Taped conversation played)

25 Q. And, Mr. Kleckner, did you say to Mr. Katz in that

Mr. Kleckner - Direct - Mr. Tokayer

1 April 2011 conversation that you had been pretty open  
2 with Mr. Katz off the record about QBC on Aramark to  
3 terminate Kosher Sports' relationship and bring in  
4 somebody else?

5 A. Although I said that, unlike this conversation I  
6 wasn't under oath, and I was trying to guide him from  
7 going down the course he did. So I --

8 Q. When you said you had been pretty open off the record  
9 with Mr. Katz, what were you referring to?

10 A. Well, again, I'll start by saying I didn't --

11 Q. What conversation were you referring to with that?

12 A. Well, I would need to see the full conversation which  
13 you have not afforded me the opportunity to do. You've  
14 taken a very small excerpt and you're asking me very  
15 specific questions, and I'm not comfortable answering  
16 unless I see the context of it.

17 Q. Were you referring to the January 6th, 2011  
18 operational meeting with Mr. Grey that you had walked in  
19 on?

20 A. I don't know.

21 Q. Did you also say to Mr. Katz in that April phone  
22 conversation that you operate with integrity and anything  
23 you said you would repeat verbatim and that you certainly  
24 wouldn't perjure yourself.

25 A. I'll start by saying I would never perjure myself. I

Mr. Kleckner - Direct - Mr. Tokayer

1 was trying to guide Jonathan from going down this course,  
2 and I was trying to advise him to not go that direction.

3 Q. My question to you was --

4 A. The --

5 Q. I'm sorry.

6 A. The intricacies of our contract with the Mets which  
7 Jonathan's not privy to, they cannot dictate that I  
8 terminate a contractor. They can make that decision, and  
9 then if I am not on board with it, which I informed  
10 Michael Landeen at that point KSI was not in breach with  
11 Aramark and I was not going to terminate.

12 Then there's an arbitration process we would go  
13 through. So regardless of what I told Jonathan, the  
14 bottom line is, the way our contract actually works, the  
15 Mets cannot out right say terminate without me having the  
16 right to do what I did do at that point in time, which is  
17 defend Kosher Sports to stay from before there was the  
18 sanctions up until his performance fell apart this year.

19 Q. My question was very simple. Did you in that April  
20 conversation say to Mr. Katz that you operate with  
21 integrity, is there anything you said you were being  
22 verbatim and that you certainly wouldn't perjure  
23 yourself, yes or no?

24 A. Sounds like something I would say, yes.

25 MR. TOKAYER: No further questions of this

Mr. Kleckner - Cross - Mr. Mehlman

1 witness.

2 THE COURT: Cross-examination?

3 MR. MEHLMAN: Yes.

4 CROSS EXAMINATION

5 BY MR. MEHLMAN:

6 Q. Mr. Kleckner, could you describe your relationship  
7 with Mr. Katz prior to getting involved in this lawsuit?

8 A. He was somebody who would frequently represent  
9 himself as a friend of mine. He had somebody I had  
10 favorable business dealings with, that I was a big  
11 supporter of, because I felt he was doing a better job  
12 than the other options, both in the Philadelphia market  
13 and here, but that, of course, was the relationship then.

14 Q. And at that time, did you consider Mr. Katz to be a  
15 friend?

16 MR. TOKAYER: Objection.

17 THE COURT: Overruled.

18 A. Yes. Through work, I mean, we were not social  
19 friends, but we were very friendly.

20 Q. And did you care about Mr. Katz and his ability to  
21 operate at Citi Field?

22 A. Yes.

23 Q. And did you try to advise Mr. Katz regarding his  
24 filing of this lawsuit?

25 A. Yeah. I advised him aside from the consequences it

Mr. Kleckner - Cross - Mr. Mehlman

1 would have specific to Citi Field, that if he were to do  
2 essentially what he's done now, they could have broader  
3 consequences with his relationship with Aramark.

4 Q. And when you discussed this issue whether it was in  
5 April 2011 conversation or the January 2011 conversation,  
6 were you trying to advise Mr. Katz?

7 A. Very much so. I was giving him -- I was actually  
8 trying to guide him more so than advise him. I was  
9 trying to guide him away from the course he had been  
10 through or been going down. It seemed at that point his  
11 goal was to try and embarrass the Mets through the media,  
12 and then pursue litigation, and I thought it was a  
13 terrible course to go down.

14 Q. Now, did Mr. Katz ask you whether Aramark would  
15 permit him to operate on Friday and Saturday?

16 A. Yes.

17 Q. Do you remember the first time he raised that with  
18 you?

19 A. I don't remember per se. I do know I've been -- that  
20 we had several different conversations about it. The  
21 first time we had the conversation would've been when  
22 Scott Wiegert was still working, and I remember having a  
23 conversation with Jonathan and then sharing the  
24 conversation with Scott Wiegert and getting his opinion  
25 on it.

Mr. Kleckner - Cross - Mr. Mehlman

1 Q. So April 6th, 2011, two days before opening day, was  
2 not the first time that Mr. Katz had raised or requested  
3 that he operate on Friday night and Saturday night; is  
4 that correct?

5 MR. TOKAYER: Your Honor, objection. This goes  
6 beyond the scope of the direct. I did not ask anything  
7 about Friday and Saturday sales. It was only asked  
8 whether or not the Mets had sought to terminate his  
9 relationship, Mr. Katz's relationship with Citi Field.

10 THE COURT: Overruled.

11 Q. You may answer the question.

12 A. Yeah. We had -- I had conversations with Jonathan  
13 prior to that about Fridays and Saturdays towards the end  
14 of the previous season. And when I'd asked him at that  
15 point, he told me he really didn't intend on opening on  
16 Fridays and Saturdays. So it was totally out of the blue  
17 that right before opening day, he decided to bring the  
18 issue up and try and enforce it.

19 Q. So Mr. Katz told you that he never intended to open  
20 up on Fridays and Saturdays?

21 A. When --

22 MR. TOKAYER: Objection.

23 A. When we had spoke --

24 THE COURT: You know, I will allow you to go  
25 into this, but in the interest of expediting this so we

230

Mr. Kleckner - Cross - Mr. Mehlman

1 don't have to call the witness back, but I think you're  
2 making him your own witness so you can cease all the  
3 leading.

4 MR. MEHLMAN: I will, Your Honor.

5 Q. Mr. Katz indicated that -- you just indicated that  
6 Mr. Katz told you that he wasn't really interested in  
7 operating on Friday and Saturday; is that correct?

8 A. Correct.

9 Q. Did you ask him why he then brought the lawsuit  
10 regarding that request?

11 A. It would've been at the end of the previous season.  
12 It was when I already was familiar with what was going on  
13 from the papers, and from that point, I'm sure  
14 conversation with Jonathan and the Mets and my folks, and  
15 I asked him point blank, do you plan on opening Fridays  
16 and Saturdays. And at that point, it may have been  
17 limited to the season, but it was a definite no.

18 Q. Now --

19 THE COURT: Which season are we -- the same  
20 2010 season?

21 THE WITNESS: Yeah, before the off season, it's  
22 the last season.

23 MR. UNIDENTIFIED: Which season, 2010?

24 Q. Now, you indicated that you told Mr. Katz what  
25 Aramark's position was with regard to him operating on

Mr. Kleckner - Cross - Mr. Mehlman

1 Friday and Saturday; is that correct?

2 A Yeah. I shared my personal opinion of a Jewish  
3 background, and I did not feel that you could be Glatt  
4 Kosher and operate on the Sabbath. Also after, later up  
5 in the conversation with Scott Wiegert and I shared with  
6 him that Scott was of a different religious background,  
7 and he felt that although there had been no real thought  
8 or discussion of that evidence, it's not why we  
9 contracted with him, if we were ever to extend operating  
10 rights Friday and Saturday to him, then it would be under  
11 very different financial terms.

12 Q. And why would it be under very different financial  
13 terms?

14 MR. TOKAYER: Objection.

15 THE COURT: Would you -- what -- I will limit  
16 you to what he said to Mr. Katz.

17 THE WITNESS: I did not specify the terms,  
18 other than -- I guess that's the answer.

19 Q. And what is Aramark's position with regard to  
20 permitting Kosher Sports, Inc. to operate on Friday and  
21 Saturday?

22 A. As far as Citi Field's concerned, really Aramark, for  
23 that venue, that's my decision.

24 Q. And what is your decision?

25 A. That it would compromise the integrity of our Glatt



Mr. Kleckner - Cross - Mr. Mehlman

1 Kosher offerings the other days of the week, which is the  
2 whole reason that we have a Glatt Kosher operators to be  
3 able to deliver that at the highest level, which I would  
4 not want to compromise.

5 Q. And is Aramark's position that position because it's  
6 also the Mets' decision?

7 A. It's my position, which again, our relationship with  
8 the Mets, although we sometimes throw around words like  
9 partnership, we really do -- you know, things aren't  
10 forced down to me, so I can tell you that I really know  
11 more about the Mets' position from things I've read in  
12 the papers. It's almost a moot point. It's really my  
13 position, and as Aramark, I dictate hours of operation,  
14 days of operation, et cetera.

15 Q. Did anybody from the Mets ever ask you to terminate  
16 KSI?

17 MR. TOKAYER: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: I was never told to terminate, I  
20 was never asked to take the steps to terminate. We  
21 certainly discussed if there was a termination what we  
22 would do. And I was definitely directed to make sure I  
23 had a contingency.

24 Q. And the reason for the contingency was?

25 A. There's different incidents that have happened in the

Mr. Kleckner - Cross - Mr. Mehlman

1 past, both at our ballpark down in Brooklyn, our minor  
2 league ballpark, and at Chase Stadium where there have  
3 been periods of time where we have not had kosher food  
4 available, and to many of our guests, that's something  
5 that they need.

6 MR. MEHLMAN: Thank you. I have nothing  
7 further.

8 THE COURT: Any redirect?

9 MR. TOKAYER: Yes, Your Honor.

10 (Pause)

11 THE COURT: While Mr. Tokayer is going through  
12 his notes, I have a question for Mr. Kleckner. You said  
13 it's your own view that Aramark would lose credibility if  
14 you allowed your Glatt Kosher subcontractor to operate on  
15 a Jewish Sabbath at Citi Field, and you specifically said  
16 Citi Field. There is evidence that there are other  
17 Aramark venues where KSI has been permitted to operate on  
18 the Jewish Sabbath.

19 So how do you square your testimony with the --  
20 and including the venue where you were working at the  
21 time, how do you square your own view and your claimed  
22 loss of credibility with the fact that KSI was permitted  
23 by Aramark to operate at other venues on the Jewish  
24 Sabbath?

25 THE WITNESS: Our businesses are run where --

Mr. Kleckner - Cross - Mr. Mehlman

1 in the instance of Citi Field, I'm really the business  
2 leader. So I have almost an entrepreneurial range of  
3 responsibility where it's really, you know, quote/unquote  
4 my account, it's something though to defend my personal  
5 integrity. I also know this market, unlike some of the  
6 other markets that we work with across the country,  
7 there's definitely heightened sensitivity, there's some  
8 very, very observant Jews that, you know, me an example,  
9 and you know, a neighbor of not too far from here, you  
10 couldn't find a kosher business open on a Friday or  
11 Saturday night. And if they weren't open, they wouldn't  
12 just lose credibility, people would no longer pay for  
13 (indiscernible).

14 So especially in this area, it's something that  
15 we have to be very sensitive to. At the stadium, I sell  
16 my kosher style products, I sell knishes or pretzels that  
17 are --

18 THE COURT: I'm sorry, which stadium are you  
19 referring to now?

20 THE WITNESS: At Citi Field. I sell items that  
21 are to some guests would meet the lowest level of needs,  
22 they're prepared in a kosher style at the manufacturer.  
23 But my focus is much like whether it's vegetarianism or  
24 gluten free, is to do things of the highest standard, and  
25 with kosher, that's -- the standpoint. Because with

235

Mr. Kleckner - Cross - Mr. Mehlman

1 gluten free, for example, I have a whole separate cart so  
2 that there's no chance of cross contamination of gluten  
3 because that's the best way to ensure that there's not  
4 cross contamination, is to have a totally separate area.

5 With kosher, it's not being open Fridays and  
6 Saturdays. It's just really doing it at the highest  
7 level of integrity, which is what our goal is.

8 THE COURT: And when you were associated with  
9 the -- it's the Philadelphia venue?

10 THE WITNESS: Yes.

11 THE COURT: Were you involved in the decision  
12 as to whether or not KSI would operate on Fridays and  
13 Saturdays?

14 THE WITNESS: Yes.

15 THE COURT: So you were involved?

16 THE WITNESS: Yes.

17 THE COURT: And did you support that decision?

18 THE WITNESS: I don't recall ever allowing them  
19 to operate on a Friday or Saturday at Lincoln Financial  
20 Field.

21 THE COURT: You're saying they weren't allowed  
22 to?

23 THE WITNESS: I don't recall ever allowing them  
24 to, no.

25 THE COURT: All right.

Mr. Kleckner - Redirect - Mr. Tokayer

1 Mr. Tokayer, you may proceed.

2 MR. TOKAYER: Thank you. Okay.

3 REDIRECT EXAMINATION

4 BY MR. TOKAYER:

5 Q. You said that Mr. Katz advised you that he didn't  
6 intend to operate on Fridays and Saturdays. Did he ever  
7 convey that to you in writing?

8 A. I don't recall if it was ever conveyed in writing.

9 Q. Aramark's been subpoenaed in this case. Is there any  
10 writing from Mr. Katz, anyone at Aramark, in which  
11 Mr. Katz says that he doesn't intend to operate on  
12 Fridays and Saturdays that you're aware of?

13 A. If I'm understanding the question, no, that I'm aware  
14 of.

15 Q. Okay. So your position with Mr. Katz was that you  
16 wouldn't allow him to operate on Fridays and Saturdays at  
17 Citi Field? Did you ever convey that position to Mr.  
18 Katz in writing?

19 A. Well, I'll start by saying I --

20 Q. Yes or no, did you convey it to him in writing?

21 A. I mean I'm looking at the April 7th e-mail, so I'll  
22 say yes.

23 Q. Prior to April 7th?

24 A. I can't give a yes or no, I don't recall.

25 Q. Okay. And which -- what are you looking at on the

Mr. Kleckner - Redirect - Mr. Tokayer

1 April 7th, which exhibit are you referring to?

2 A. 40.

3 Q. And other than Exhibit 40, have you ever communicated  
4 you, Mr. Kleckner, to Mr. Katz the position that you  
5 didn't want Mr. -- Kosher Sports to operate on Friday and  
6 Saturdays at Citi Field in writing?

7 A. In my role, I had very little direct communication  
8 with Jonathan Katz. I was not trying to prepare  
9 documentation for a lawsuit, so I will say it's a safe  
10 bet no.

11 Q. Okay. And in response to our subpoena of Aramark in  
12 this case, are you aware of any document in which anyone  
13 from Aramark prior to April 7th, 2011 advised Mr. Katz  
14 that it was Aramark's position that Kosher Sports would  
15 not be permitted to operate on Fridays and Saturdays at  
16 Citi Field?

17 A. The question is beyond my understanding. I know the  
18 personal process that I went through in discovery, I  
19 produced everything and --

20 Q. Yes or no, do you know of any document like that?

21 A. Well, I don't have knowledge of the area you're  
22 covering. You're asking me about stuff I haven't  
23 reviewed.

24 Q. I'm only asking you for your knowledge.

25 A. Well then, no, I only participated in my own

Mr. Kleckner - Redirect - Mr. Tokayer

1 discovery process.

2 Q. And you say that Mr. Katz told you he didn't want to  
3 operate on Fridays and Saturdays, but you did get my  
4 letter, correct, from August 27th, 2010 where I told you  
5 that he did intend to operate on Fridays and Saturdays,  
6 right? You got that?

7 A. It was after that that I had the conversation with  
8 him.

9 Q. Did you take notes of that conversation?

10 A. Not to my recollection, no.

11 Q. Anyone else present?

12 A. I don't even recall if it was a phone conversation or  
13 a meeting, but I presume it was a phone conversation, so  
14 no.

15 Q. So as the resident district manager, it is your  
16 decision, correct, whether to let Kosher Sports operate  
17 on Fridays and Saturdays at Citi Field, right?

18 A. Correct.

19 Q. Even Mr. Wiegert, your boss, had not dictated the  
20 decision to you, right?

21 A. If it was something -- granted he's been out on  
22 disability quite a while, it would not have been his  
23 style to enforce an issue. Technically, could he have  
24 dictated it, I mean, yeah, we all have bosses, but it's  
25 something he would have done.

Mr. Kleckner - Redirect - Mr. Tokayer

1 Q. Okay. And, in fact, you disagreed with Mr. Wiegert's  
2 position as you've described it here; is that right?

3 MR. MEHLMAN: Objection.

4 THE WITNESS: I don't understand the question.

5 Q. You testified about a position that Mr. Wiegert had  
6 about that if John was allowed to operate on Friday and  
7 Saturdays, it would have to be under a different  
8 financial arrangement, and you, the resident district  
9 manager, disagreed with that, correct?

10 A. Not the way you phrased it. I'll answer in a way I'm  
11 comfortable with. I said definitively I was not open to  
12 him serving on Fridays and Saturdays, as you just said,  
13 Scott said if we were to go in that direction. If it  
14 would be under very different financial terms. That was  
15 not a position as much somebody who was a boss and a  
16 mentor giving me perspective.

17 Q. Just to be clear, Mr. Wiegert could not have demanded  
18 a decision of you, and anyway, you disagreed with his  
19 position, correct? Correct?

20 A. No. What is correct is, he was my boss, as is  
21 understood in a relationship between a boss and employer,  
22 if he felt very strongly about it, he could have  
23 overruled me. That is not how we worked together, as  
24 I've explained to you in the past, Scott would not have.  
25 But again, when you use absolutes could he have, yes, he



Mr. Kleckner - Redirect - Mr. Tokayer

1 was my boss, I have several bosses.

2 Q. Okay. So let me ask you if you were asked the  
3 following question at your deposition and you gave the  
4 following answer, page 139, line 10:

5 "Question: Was Mr. Wiegert more  
6 specific about those terms more  
7 favorable to Aramark?

8 "Answer: No. And to be clear,  
9 ultimately it's my call. Scott was  
10 in a position to influence my  
11 decision but could not have demanded  
12 a decision. He was giving me a  
13 different perspective one which I  
14 disagreed."

15 Did you give --

16 A. I absolutely --

17 Q. -- that answer to that question yes or no?

18 A. We're splitting hairs with couldn't or wouldn't, but  
19 I'll say yes.

20 Q. Okay. Now, on Wednesday, April 6th, 2011, you  
21 testified that you and Mr. Katz discussed whether Kosher  
22 Sports could operate on opening day, Friday, April 8th  
23 and Saturday, April 9th, do you recall that generally?

24 A. I don't recall being repositioned in April, no.

25 Q. Do you recall a discussion with Mr. Katz in April of

Mr. Kleckner - Redirect - Mr. Tokayer

1 2007 whether he could operate his carts on opening day,  
2 on Friday, April 8th and Saturday, April 9th?

3 MR. MEHLMAN: Objection. I think we're beyond  
4 the scope of my cross-examination, Your Honor. I think  
5 we've gone back into direct examination.

6 MR. TOKAYER: No. This is directly relevant to  
7 his claim that he told Mr. Katz.

8 THE COURT: Well, I'm going to allow it anyway,  
9 because if it doesn't come out now, then we'll be calling  
10 Mr. Kleckner back on the defense case. So I will allow  
11 it.

12 Q. Do you recall talking to Mr. Katz on April 6th about  
13 April 8th and April 9th?

14 A. I recall the e-mail that I sent him April 7th.

15 Q. Do you recall the telephone conversation that you had  
16 with him?

17 A. Again, I don't recall if that was April 6th, but I'll  
18 presume that was the conversation where he's asking me to  
19 write him a letter telling he -- the conversation from my  
20 collection was he called and asked me to write him a  
21 letter stating my position.

22 Q. And in that conversation, you said to Mr. Katz that  
23 you would not be letting him operate during that first  
24 weekend, Friday and Saturday of opening day, but that you  
25 did not -- were not saying, though the future Friday and

Mr. Kleckner - Redirect - Mr. Tokayer

1 Saturday events; isn't that true?

2 A. I don't know if that is true.

3 Q. What do you mean you have a tape, this is at track 5.

4 A. Is this a new tape?

5 Q. It's the tape of the April 6th conversation.

6 MR. TOKAYER: Are we ready or do you want to --

7 MR. MEHLMAN: Page 12, Your Honor, line 24,  
8 "Frankly, honestly, I don't know their feelings, if that  
9 would be authentic."

10 MR. TOKAYER: Yes.

11 THE COURT: All right.

12 (Tape conversation played)

13 Q. Is that your voice?

14 A. It appears it was my voice and Jonathan's voice.

15 Q. And did you say that with respect to Fridays and  
16 Saturdays in the future, that you were not saying no to  
17 those future Fridays and Saturdays, that you were just  
18 saying no to just this Friday and this Saturday in that  
19 conversation?

20 A. In that conversation Jonathan had said that first of  
21 all --

22 Q. First of all, did you say that?

23 A. It's out of context, he never --

24 Q. Okay. But your attorney will have plenty of  
25 opportunity to bring the context back.

Mr. Kleckner - Redirect - Mr. Tokayer

1 A. Well --

2 Q. I just asked you whether you said it.

3 A. Right. He also said --

4 Q. Okay. No question pending.

5 Referring to the contingency plan that you apparently  
6 discussed with the Mets. Do you remember that testimony  
7 generally?

8 MR. MEHLMAN: Objection. I think we're going  
9 beyond the scope, Your Honor, and I only have one  
10 question on my direct case for Mr. Kleckner, and it  
11 doesn't relate to any of this. Mr. Tokayer had full and  
12 fair opportunity to direct examine the witness.

13 THE COURT: Let me hear the question.

14 Q. Yeah. On your examination by Mr. Mehlman, you said  
15 that you were never told or asked to terminate Kosher  
16 Sports, you discussed what you would do in a contingency  
17 situation. Do you recall that generally?

18 MR. MEHLMAN: Objection. That wasn't the  
19 witness' testimony.

20 THE COURT: Overruled.

21 MR. TOKAYER: Could you just -- may I have the  
22 question?

23 THE WITNESS: If you were using the word told,  
24 I was never told to terminate Kosher Sports, which is  
25 deemed directed to do so.

Mr. Kleckner - Redirect - Mr. Tokayer

1 Q. Were you asked to terminate?

2 A. I was asked to have contingencies should there be a  
3 termination.

4 Q. Right. And contingencies, you mean by that, in case  
5 Mr. Katz decided to leave Citi Field on his own?

6 A. Or if I were to terminate him, or if the Mets were to  
7 terminate him, or if we were to mutually terminate him.  
8 The bottom line is, none of those operators became our  
9 contingency plan because I didn't qualify any of them  
10 being able to operate in the stadium, and then we stopped  
11 researching options.

12 Q. Were you concerned that Mr. Katz was going to leave  
13 Citi Field on his own volition?

14 A. Yes.

15 Q. And were the Mets concerned about that?

16 MR. MEHLMAN: Objection.

17 THE WITNESS: I don't know.

18 THE COURT: Okay.

19 Q. Now, isn't it true that in your conversation with Mr.  
20 Katz in January, okay, you said to Mr. Katz that when  
21 asked whether or not the Mets wanted to terminate --  
22 strike that, I'll start again.

23 You told Mr. Katz that Kosher Sports came to you and  
24 tried to get you to find somebody else, that the Mets  
25 would actually defend what they were doing by saying that

Mr. Kleckner - Redirect - Mr. Tokayer

1 it would -- it was really a contingency plan, but to cut  
2 through the bull shit, they were asking to terminate Mr.  
3 Katz. Do you remember telling Mr. Katz that?

4 MR. MEHLMAN: Objection.

5 THE WITNESS: I don't even understand your  
6 question.

7 Q. Do you remember telling Mr. Katz --

8 THE COURT: Well, I'd like to hear the  
9 objection.

10 MR. MEHLMAN: Yes, that's not in the  
11 transcript. The ending part is not in that series.  
12 That's not what he said. Which part are you referring  
13 to, Mr. Tokayer?

14 MR. TOKAYER: I asked the witness a question.

15 MR. MEHLMAN: I asked you which track you're  
16 referring to, Mr. Tokayer?

17 MR. TOKAYER: I wasn't referring to any track,  
18 I asked the witness a question.

19 MR. MEHLMAN: Okay. I believe he's asking him  
20 a question based upon the transcript, and that's not --

21 THE COURT: I think now we are going over areas  
22 that -- let's wrap this up and get on with the next  
23 witness.

24 MR. TOKAYER: Yes. Let me just play track 4  
25 again.

Mr. Kleckner - Redirect - Mr. Tokayer

1 MR. MEHLMAN: Is there a question or are we  
2 just playing track 4, Your Honor?

3 THE COURT: What is it that you --

4 MR. TOKAYER: I asked him whether or not it  
5 would be the Mets -- whether the Mets told him --

6 THE COURT: If you're simply going to ask him  
7 what he said then the tape and the transcript are in  
8 evidence. And I can listen to it, and I have, and I have  
9 the transcripts in front of me.

10 MR. TOKAYER: The tape and transcript aren't in  
11 evidence then.

12 THE COURT: Well, the transcript -- I'm sorry,  
13 maybe I'm mistaken, the tape is in evidence.

14 MR. MEHLMAN: The tape is in evidence for  
15 impeachment purposes only, Your Honor.

16 MR. TOKAYER: Then that would not be in  
17 evidence. Are you saying that the tape is in evidence?  
18 Then I don't have any --

19 THE COURT: The tape is in evidence not for the  
20 truth.

21 MR. TOKAYER: Okay.

22 Q. Mr. Kleckner --

23 MR. MEHLMAN: Objection, Your Honor. And  
24 the --

25 THE COURT: Well, all he did was say his name.

Mr. Kleckner - Redirect - Mr. Tokayer

1 MR. MEHLMAN: No, no, no. I'm making it clear,  
2 Your Honor, and you cannot use the tape for the truth  
3 thereof. That's pursuant to the Court's ruling.

4 THE COURT: That's correct.

5 Q. Did you tell Mr. Katz that the Mets would defend  
6 their request of you to terminate Kosher Sports by saying  
7 that they were just pursuing other options but to cut to  
8 the bull shit, they were looking to terminate him. Do  
9 you remember telling Mr. Katz that?

10 A. I don't recall if those were my exact words. I can  
11 say --

12 Q. Okay. So let me --

13 A. I can say at this point, anybody would want to  
14 terminate Kosher Sports, so if I use the word want as I  
15 was advising Jonathan, it's very unpleasant to have  
16 somebody going to the press and being very litigious and  
17 costing us lots of money and time.

18 Q. Okay. Let me just play that track four again.

19 THE COURT: For what purpose? Let's not  
20 belabor it. It is in evidence for impeachment purposes  
21 only. You've had him explain his recollection of what he  
22 said, and I can compare it to the tape.

23 MR. TOKAYER: Okay.

24 THE COURT: So let's move on.

25 MR. TOKAYER: Yes, Your Honor.



Mr. Kleckner - Redirect - Mr. Tokayer

1 One moment.

2 (Pause)

3 Q. You said that you understood that Mr. Katz went to  
4 the press. Do you have any evidence of Mr. Katz ever  
5 calling the press or writing the press?

6 MR. MEHLMAN: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: I had a news --

9 Q. Yes or no, do you have any evidence of that?

10 A. There was a newspaper article.

11 Q. That Mr. Katz initiated?

12 A. I don't believe I ever accusing him of specifically  
13 going to the press. I don't know what you're asking. I  
14 do know that I did tell Jonathan it would not be smart to  
15 try to embarrass the Mets in the press, and to -- and I  
16 also was trying to defend the position of Aramark, and  
17 telling him that it would be foolish to involve Aramark  
18 in this.

19 Q. With respect to the decision by Aramark not to let  
20 Mr. Katz operate on Fridays and Saturdays, let me just  
21 ask you to turn to Exhibit 44. Is that the letter from  
22 your attorneys to Judge Weinstein. And if you look at  
23 the second page, the end of the full paragraph, the last  
24 two sentences, start with the words, "Based on." Are you  
25 with me?

Mr. Kleckner - Redirect - Mr. Tokayer

1 A. I am not. Looking at Exhibit 44?

2 Q. Yes.

3 A. And where are you?

4 Q. The first -- the full paragraph on page 2. Not the  
5 last sentence but the next to last sentence. It begins  
6 with the word "Based on".

7 A. I see that.

8 Q. "Based on the economics of the deal, and perceived  
9 patron demand both for KSI's products and --"

10 THE COURT: I'm sorry, this is 44?

11 MR. TOKAYER: Yes.

12 THE COURT: I see "Based upon the forgoing."  
13 What are you looking at?

14 MR. MEHLMAN: It's the second paragraph, your  
15 Honor.

16 THE COURT: On which page?

17 MR. MEHLMAN: It's the second on page 2 that  
18 starts with the word Second. If you count five lines up  
19 from the bottom of that paragraph, towards the lefthand  
20 side after see it, it says "Based upon".

21 Q. And it says "Based on the --"

22 THE COURT: Now don't -- this isn't in  
23 evidence, is it?

24 MR. MEHLMAN: No, it's not.

25 MR. TOKAYER: This is a letter written to the

250

Mr. Kleckner - Redirect - Mr. Tokayer

1 Court. I'd move it into evidence. I don't think there's  
2 any dispute that it was provided to the Court.

3 THE COURT: It's in the record.

4 MR. TOKAYER: Yes, may I move it into evidence  
5 then?

6 THE COURT: What does this witness have to do  
7 with it?

8 MR. TOKAYER: Well, I am going to ask this  
9 question. But this refers --

10 THE COURT: Well why don't you ask him what his  
11 involvement, if any, was to this letter.

12 Q. Well did you have any involvement with this letter?

13 A. No, this was my internal counsel directing outside  
14 counsel.

15 Q. Right. There's a reference in that letter though to  
16 an independent business decision made by Aramark.

17 A. Right.

18 Q. Do you see that?

19 A. I would be more comfortable describing it in my  
20 language than trying to interpret a legal document.

21 Q. Well I want to ask you whether or not the decision  
22 referred to in this document is memorialized in any  
23 writing?

24 A. As I explained in my deposition, I'll explain again,  
25 it was never contemplated -- there was never a decision

Mr. Kleckner - Redirect - Mr. Tokayer

1 to not allow him to continue operating on Fridays and  
2 Saturdays. We had consistently never had Kosher  
3 operating on Fridays and Saturdays. So it was however  
4 the lawyers worded things, I don't know. I can tell you  
5 internally, he had never operated Fridays and Saturdays.  
6 There was never any discussion of it until the stuff  
7 we've gone through.

8 Q. So was the decision not to let him operate on Fridays  
9 and Saturdays ever memorialized in any document?

10 A. As I said, there is no --

11 Q. Yes or no?

12 A. There is not a decision because it was never  
13 something contemplated.

14 Q. So the answer's no. The decision --

15 A. The answer is --

16 Q. You're not being --

17 A. -- there was no decision, so I am not going to say  
18 yes or no. There was not a decision, so something that  
19 didn't happen would not be memorialized in writing.

20 Q. And the same answer would be if I asked you whether  
21 -- where the reasons for the decision are, is it  
22 memorialized in any documents, your answer would be the  
23 same; right?

24 A. My answer is there was no decision. You're asking  
25 for documentation of something that did not happen.

Mr. Kleckner - Redirect - Mr. Tokayer

1 Q. And in a letter to Judge Weinstein, did your  
2 attorneys refer to the reasons that you've given here as  
3 to why you, Mr. Kleckner, don't want Kosher Sports to  
4 operate on Fridays and Saturdays?

5 A. As I've already said, I'm not comfortable  
6 interpreting third-hand legal documents. I -- as I  
7 explained in writing to Jonathan and to yourself, when it  
8 comes to legal matters, I have in-house counsel who I  
9 direct these things to. They chose to retain outside  
10 counsel and you're asking me to interpret this document  
11 which I am not comfortable doing.

12 Q. And in Mr. Bombach's letter to me of April 8, 2011,  
13 which is Exhibit 42, does he refer to the reason that you  
14 gave in this court for not allowing Mr. Katz and Kosher  
15 Sports to operate on Fridays and Saturdays?

16 MR. MEHLMAN: Objection.

17 THE COURT: Sustained.

18 MR. TOKAYER: Your Honor, I would move Exhibit  
19 42 into evidence because it's a letter that I received  
20 from Mr. Bombach.

21 MR. MEHLMAN: Objection.

22 THE COURT: Sustained.

23 MR. TOKAYER: No further questions.

24 MR. MEHLMAN: Your Honor, since Mr. Kleckner is  
25 on our list as a witness, and I know there's some

Mr. Kleckner - Direct - Mr. Mehlman

1 scheduling issues, with the Court's permission if I could  
2 take Mr. Bombach -- Mr. Kleckner --

3 THE COURT: Kleckner?

4 MR. MEHLMAN: -- I'm sorry, out of order on our  
5 case and just ask him a few questions, so he doesn't have  
6 to wait until after Mr. Grey testifies.

7 THE COURT: I assume there's no objection to  
8 that.

9 MR. TOKAYER: I thought Mr. -- I thought he  
10 asked the questions that he wanted to ask of  
11 Mr. Kleckner --

12 MR. MEHLMAN: You objected.

13 MR. TOKAYER: -- on cross-examination.

14 MR. MEHLMAN: You objected and you --

15 MR. TOKAYER: And you went on and asked.

16 MR. MEHLMAN: Well, I --

17 THE COURT: If you have anything you want to  
18 say please direct it to me.

19 MR. TOKAYER: Yes.

20 THE COURT: I did give you leeway to go into  
21 questions that would be questions for direct. If you're  
22 saying you have a few more, I will allow them.

23 MR. MEHLMAN: Thank you.

24 THE COURT: Then the only question is whether  
25 we do it now or whether we do it after Mr. Grey

Mr. Kleckner - Direct - Mr. Mehlman

1 testifies. I don't see any reason why we shouldn't  
2 finish up with this witness now.

3 MR. MEHLMAN: Thank you.

4 THE COURT: Let's keep it short, please.

5 MR. MEHLMAN: Yes.

6 THE COURT: And remember he's your witness.

7 MR. MEHLMAN: Yes.

8 DIRECT EXAMINATION

9 BY MR. MEHLMAN:

10 Q. Who operates the locations where Mr. Katz's carts are  
11 on Fridays and Saturdays?

12 A. They are Aramark proprietary carts. So it's my staff  
13 with my management. It's not shared with a  
14 subcontractor.

15 Q. And do you make more money -- does Aramark make more  
16 money operating its carts on Friday and Saturday as  
17 opposed to if Mr. Katz would operate its carts on Friday  
18 and Saturday?

19 MR. TOKAYER: Objection. Relevance. He's  
20 testified as to the reasons that he gave and when I asked  
21 him at his deposition these kinds of questions, Aramark  
22 objected and didn't permit me to inquire further into the  
23 financial situation of Aramark and those carts.

24 MR. MEHLMAN: That's absolutely inaccurate,  
25 your Honor. The questions were asked and Mr. Kleckner

255

Mr. Kleckner - Direct - Mr. Mehlman

1 was very, very clear in his answer regarding this issue.

2 THE COURT: Well I am going to allow it but you  
3 well be opening a door that you would rather not have  
4 opened.

5 MR. MEHLMAN: I would like to hear the answer.

6 THE COURT: I'll allow it.

7 A. As I stated in the deposition, we're significantly  
8 more profitable on those Fridays and Saturdays, as we are  
9 not sharing in a portion of our net sales with an outside  
10 contractor. We also sell items at a higher dollar amount  
11 and based on their mass appeal, we sell more of them.

12 THE COURT: Are you sharing your revenues with  
13 QBC?

14 THE WITNESS: Yes, in our --

15 THE COURT: All right.

16 THE WITNESS: -- in all sales.

17 THE COURT: And QBC also has a financial  
18 interest in having the Aramark proprietary carts operate  
19 on Fridays and Saturdays; correct?

20 THE WITNESS: Yes, they share in all net sales,  
21 whether it's a subcontractor or a "Aramark" doing it  
22 directly.

23 THE COURT: All right. I hope that's the end  
24 of the questions on this.

25 MR. MEHLMAN: Okay. Nothing further.



256

Mr. Grey - Direct - Mr. Tokayer

1 MR. TOKAYER: Nothing further, your Honor.

2 THE COURT: All right. Thank you very much.

3 THE WITNESS: Thank you, your Honor.

4 THE COURT: You may step down.

5 (Witness excused.)

6 THE COURT: Mr. Tokayer, you can call your next  
7 and hopefully last witness. Is Mr. Grey your last  
8 witness?

9 MR. TOKAYER: Yes, your Honor.

10 R I C H A R D G R E Y ,

11 called as a witness, having been first duly sworn,  
12 was examined and testified as follows:

13 THE CLERK: If you could just state your full  
14 name and then spell your last name.

15 THE WITNESS: Sure, it's Richard Arthur Grey.  
16 Last name is G-r-e-y.

17 THE COURT: All right. Please be seated. Mr.  
18 Tokayer, you may proceed.

19 MR. TOKAYER: Thank you, your Honor.

20 DIRECT EXAMINATION

21 BY MR. GREY:

22 Q. Good afternoon, Mr. Grey.

23 A. Good afternoon.

24 Q. My name is Ira Tokayer. I represent the Kosher  
25 Sports. We have not met before; have we?

Mr. Grey - Direct - Mr. Tokayer

1 A. That's correct.

2 Q. When did you start working for Aramark?

3 A. It was April of 2010.

4 Q. And what is your title?

5 A. Right now I'm division manager of concessions.

6 Q. And to whom do you report?

7 A. I report to Tom Funk.

8 Q. After the 2010 season, before the 2011 season,  
9 specifically in January, was Aramark waiting on the Mets  
10 to tell it what to do about Kosher Sports' request to  
11 operate at Citi Field on Fridays and Saturdays?

12 A. Not to my knowledge.

13 Q. In January of 2011, as far as you knew, isn't it true  
14 that Aramark had no position on Kosher Sports' request to  
15 operate on Fridays and Saturdays?

16 MR. MEHLMAN: Objection.

17 THE COURT: May I have the question again?

18 MR. TOKAYER: Yes.

19 Q. Prior to January of 2011, as far as you Mr. Grey  
20 knew, isn't it true that Aramark had no position on  
21 Kosher Sports' request to operate on Fridays and  
22 Saturdays?

23 A. To my knowledge, they were going to continue to  
24 operate everyday with the exception of Fridays and  
25 Saturdays.

Mr. Grey - Direct - Mr. Tokayer

1 Q. And was that because they were -- so they were not  
2 going to operate on Fridays and Saturdays. Is that  
3 because the Mets didn't want them to or because Aramark  
4 didn't want them to, as far as you knew at that time?

5 A. As far as I knew, it was because they were -- it was  
6 a Sabbath day and that's the way it was from when I got  
7 there.

8 Q. And did you tell Mr. Katz on January 6, 2011 that  
9 with respect to Kosher Sports's Friday and Saturday  
10 operations, it was important for the Mets to give Aramark  
11 whatever decision they wanted Aramark to give to Kosher  
12 Sports?

13 A. On what --

14 Q. On January 6, 2011.

15 A. When we had an operations meeting --

16 Q. Correct.

17 A. That's the extent of my recollection of it. I mean  
18 it was just a regular operations meeting.

19 Q. Okay. So do you recall telling Mr. Katz at that  
20 operations meeting that with respect to Kosher Sports'  
21 Friday and Saturday operations, it was important for the  
22 Mets to give Aramark whatever decision they wanted  
23 Aramark to give Kosher Sports?

24 A. I don't recall that; no.

25 Q. Okay. Let me play a tape -- a portion of that

Mr. Grey - Direct - Mr. Tokayer

1 meeting for you.

2 A. Okay.

3 Q. And see if you recognize your voice and if now you'll  
4 recall telling Mr. Katz that.

5 (Taped Conversation played back.)

6 Q. We're actually going to play the CD and we're going  
7 to play it from a little before when your transcript  
8 begins and that would be the January 6 transcript that  
9 you've identified as Exhibit --

10 THE COURT: So you don't have your own  
11 transcript for this?

12 MR. TOKAYER: Right. The end of it,  
13 your Honor, will be our track 4. I'm sorry, track 1 but  
14 it precedes the beginning. It also precedes the  
15 beginning of QBC's transcript. It's Exhibit C.

16 (Recording played back.)

17 Q. Is that your voice, Mr. Grey?

18 A. It sounds like it; yes.

19 Q. Thank you. Okay.

20 (Recording played back.)

21 MR. TOKAYER: Okay, thank you.

22 Q. Now does that refresh your recollection that at that  
23 meeting with Mr. Katz you said to him that it was  
24 important for the Mets to give Aramark whatever decision  
25 the Mets wanted you to give Kosher Sports very quickly.

Mr. Grey - Direct - Mr. Tokayer

1 A. I took that more as me understanding what he was  
2 saying.

3 Q. And earlier do you recall saying "We do their  
4 decision? Do you recall saying that, referring to  
5 Aramark doing the Mets' decisions?

6 A. I --

7 Q. Would you say that, as well?

8 A. I didn't just hear that in there. I mean there was a  
9 lot of apparently wind blowing. So I didn't hear that in  
10 just that part; no.

11 Q. And there was a part earlier, do you recall saying  
12 that -- responding to Mr. Katz or in that meeting, did  
13 you also agree with Mr. Katz's stated opinion that right  
14 off the bat, he knew that the Mets were not going to let  
15 this happen, meaning Friday and Saturday sales and you  
16 agreed with that opinion? Do you remember that?

17 A. I remember him saying it but I don't remember seeing  
18 me saying you're right. I just remember us having the  
19 conversation.

20 Q. Okay. Do you remember saying yes?

21 A. If I just said it on there, then possibly. Do I  
22 remember saying it? No.

23 MR. TOKAYER: I have no further questions,  
24 your Honor for Mr. Grey. Thank you.

25 THE COURT: Any cross?

Mr. Grey - Cross - Mr. Mehlman

1 MR. MEHLMAN: Briefly.

2 CROSS-EXAMINATION

3 BY MR. MEHLMAN:

4 Q. Mr. Grey, what's your title at Aramark?

5 A. Division manager of concessions.

6 Q. Do you work for Mr. Funk?

7 A. Correct.

8 Q. Who then works for Mr. Kleckner?

9 A. Correct.

10 Q. Who is the ultimate decision-maker at Citi Field for  
11 Aramark?

12 A. Scott Kleckner.

13 Q. Not yourself?

14 A. No.

15 Q. Do you have any real decision making when it comes to  
16 issues like operating on Fridays and Saturdays?

17 A. I just make proposals and suggestions but the  
18 decisions come from higher than me.

19 Q. Thank you very much. Nothing further.

20 THE COURT: All right. Thank you very much.

21 You may step down.

22 (Witness excused.)

23 THE COURT: Does the plaintiff have any other  
24 evidence to offer?

25 MR. TOKAYER: Your Honor, before I rest, I

Mr. Grey - Cross - Mr. Mehlman

1 understand that I inadvertently failed to move the  
2 following exhibits and evidence into evidence when they  
3 were testified to. It would be Exhibit 1, 3 --

4 MR. MEHLMAN: 3's in.

5 MR. TOKAYER: 3's in? Okay. 29 and 37. And I  
6 would move those in at this time.

7 THE COURT: What's the defendant's position?

8 MR. MEHLMAN: No objection.

9 THE CLERK: I'm sorry, 1, 39?

10 MR. TOKAYER: 1, 3, 29 and 37.

11 THE COURT: No, 3 --

12 MR. TOKAYER: 3 was in already.

13 THE CLERK: 1, 29 and 37?

14 (Plaintiff's Exhibits 1, 29 and 37 marked in evidence.)

15 MR. TOKAYER: Yes. And with respect to 44,  
16 which was a letter to the Judge, I don't think I  
17 understood your Honor's ruling. Is that in evidence or  
18 is that just a part of the record?

19 THE COURT: It's a lawyer's argument. So what  
20 is the evidentiary value of it?

21 MR. TOKAYER: The evidentiary value is that  
22 even at that late date, the reasons that are being  
23 proffered in this court were not conveyed to the Court on  
24 April 19, 2011. We will argue that that tends to  
25 establish that the reasons were after the fact and

Mr. Katz - Redirect - Mr. Tokayer

1 feigned.

2 THE COURT: Well make that argument -- it's not  
3 a hearing exhibit. If you want to argue that the -- you  
4 can make whatever argument you want from it as a legal  
5 document that's part of the record.

6 Before I give the defense an opportunity to  
7 present evidence, I do want the record to be complete. I  
8 sustained an objection to a line of questions that  
9 plaintiff's counsel sought to put to Mr. Katz concerning  
10 his alleged losses from not being permitted to not  
11 operate during the -- on the promenade level at the  
12 Pittsburgh series. So if you want to make -- complete  
13 your record, you can do that.

14 All right, Mr. Katz, if you would take the  
15 stand. And you're still under oath.

16 (Witness resumes the stand.)

17 REDIRECT EXAMINATION

18 BY TOKAYER:

19 Q. Mr. Katz, did you lose money by being forced to keep  
20 K-4-28 open for the Pittsburgh series in September of  
21 2010?

22 A. Yes.

23 Q. Approximately how much?

24 A. Approximately \$1,700.

25 MR. TOKAYER: That's it, your Honor.



Proceedings

1 THE COURT: And do you have any documentation  
2 to that effect?

3 THE WITNESS: I have a spreadsheet that can  
4 support that.

5 THE COURT: It's not here in the courtroom?

6 MR. TOKAYER: It is here in the courtroom,  
7 your Honor. I can show it to the witness.

8 MR. MEHLMAN: Your Honor, it hasn't been turned  
9 over. It wasn't an exhibit. It wasn't provided on  
10 Friday, your Honor.

11 THE COURT: All right. I'll sustain the  
12 objection. Any cross-examination?

13 MR. MEHLMAN: No, your Honor, but I would like  
14 a brief recess before we put on our case, your Honor.

15 THE COURT: All right. What is your case going  
16 to consist of, so I get a sense of how long we're going  
17 to be?

18 MR. MEHLMAN: A couple of questions for  
19 Mr. Katz and potentially Mr. Landeen.

20 THE COURT: We'll take a seven minute break.

21 MR. MEHLMAN: Thank you, your Honor.

22 (Court recessed.)

23 THE CLERK: We're back on the record.

24 THE COURT: Please be seated. Does the defense  
25 have any evidence that it wishes to offer at this time?

## Proceedings

1 MR. MEHLMAN: No, your Honor. I just wanted to  
2 put on the record the fact that -- to clear up an issue  
3 that we raised and we kept Mr. Landeen here in case the  
4 plaintiff would like to recall Mr. Landeen.

5 Based upon the e-mails that I provided to  
6 counsel, there were two -- minutes, I apologize, not e-  
7 mails, minutes that I provided to counsel. There were  
8 two official meeting minutes, both dated October 12, 2010  
9 in error. The October 12, 2010 minutes that were turned  
10 over to counsel were actually the minutes for the  
11 November 2 meeting.

12 And I did turn over a few moments ago, an  
13 additional set of Venue Services, weekly Aramark meeting  
14 minutes, for October 12, 2010 and they were marked and  
15 turned over referencing the October meeting. And there  
16 is no reference in those new minutes -- not new minutes,  
17 the minutes that were actually from October 12, 2010,  
18 referencing Kosher, Kosher Sports, Katz or anything of  
19 the like. But I did keep Mr. Landeen here in case the  
20 plaintiff would want to call him for the limited purpose  
21 of looking into any issues regarding the October 12, 2010  
22 minutes which I turned over a few moments ago.

23

24 THE COURT: All right. Mr. Tokayer, do you  
25 wish to question Mr. Landeen any further with regard to

Proceedings

1 these documents?

2 MR. TOKAYER: I just got this a moment ago,  
3 your Honor, so I need to look at it.

4 (Pause.)

5 MR. TOKAYER: May I address Mr. Mehlman and ask  
6 him a question about what he just turned over?

7 THE COURT: Go ahead.

8 MR. TOKAYER: Avery, the two page e-mail with  
9 the October 13 date --

10 MR. MEHLMAN: Correct.

11 MR. TOKAYER: -- are you saying that that --  
12 enclosed was the new October 12 minutes.

13 MR. MEHLMAN: That's correct.

14 MR. TOKAYER: And that's the one with (a)  
15 through (h)?

16 MR. MEHLMAN: Correct.

17 MR. TOKAYER: And then the e-mail that's  
18 November 3, 2010, the enclosure for that e-mail is the  
19 October 12 minutes (a) through (l)?

20 MR. MEHLMAN: That's correct. And that's how  
21 it was forwarded to the Court straight from the -- and  
22 the client directly.

23 MR. TOKAYER: Each of the e-mails it says, for  
24 example, on the --

25 THE COURT: I thought this was going to be done

Proceedings

1 before I took the bench. My law clerk brought these  
2 documents up around ten minutes ago.

3 MR. MEHLMAN: I apologize.

4 THE COURT: I mean if I -- if you want to  
5 discuss it further, that's fine. I'll go back to  
6 chambers.

7 MR. TOKAYER: I just got it now, your Honor, so  
8 I apologize.

9 MR. MEHLMAN: I apologize, your Honor.

10 THE COURT: Were you in the courtroom when my  
11 law clerk came up?

12 MR. TOKAYER: Yes, I think he gave it to  
13 Mr. Mehlman and --

14 MR. MEHLMAN: And he put it on Mr. Tokayer's  
15 desk.

16 MR. TOKAYER: -- just now. I think we'll just  
17 take a moment, your Honor.

18 THE COURT: All right.

19 MR. TOKAYER: Maybe I could speak to him  
20 privately.

21 (Counsel confer)

22 MR. MEHLMAN: You have the November agenda  
23 without the minutes.

24 MR. TOKAYER: Based on what's been produced to  
25 me, I don't have any further questions.

## Proceedings

1 THE COURT: All right. Mr. Tokayer has no  
2 questions for Mr. Landeen. So, Mr. Landeen is free to  
3 leave. And I believe, Mr. Mehlman, you said you don't  
4 have any witnesses to call or any evidence to offer.

5 MR. MEHLMAN: Other than our application  
6 regarding the deposition testimony of Mr. Kleckner and  
7 Mr. Funk and Mr. Landeen. I know that the Court asked us  
8 to go through designations. Mr. Tokayer indicated that  
9 he would have certain designations that he would want.  
10 To save the Court's time, if the Court can give us one or  
11 two days to submit the designations because I know --  
12 well I shouldn't say I know, it may be difficult at this  
13 stage to agree on designations and to go through that  
14 process, just knowing what I know about the case so far.

15 I still don't know why there's an objection to  
16 having the entire deposition testimony moved into  
17 evidence and then if the Court requests, post-hearing  
18 memorandum, only if the Court requests those, we could  
19 certainly designate the portions that we may or may not  
20 be relying on during those papers. But if the Court does  
21 not want post-hearing memorandums, then certainly I  
22 believe within a day we could agree on designations from  
23 the other depositions.

24 THE COURT: Well do both sides want the  
25 opportunity to submit post-hearing briefs?

Proceedings

1 MR. TOKAYER: That's not necessary, your Honor.

2 THE COURT: I mean I think it could be useful  
3 to me to have them, although I don't want -- I think we  
4 should keep them relatively short and to the point. And  
5 when I had suggested that the parties designate portions,  
6 it was so that if they wanted to follow-up with questions  
7 of the witnesses on those points, that could be done  
8 while they're here. Since we're talking about  
9 designating the portions after their testimony, I am not  
10 sure that a designation makes much sense, as opposed to  
11 -- I mean either they should come in or they shouldn't at  
12 this point. And maybe that's something you can both  
13 address in your post-hearing papers why I should consider  
14 the transcripts, apart from those portions that were  
15 actually used during the witness' testimony and then the  
16 plaintiff's opposition to that.

17 I would like the post-hearing submissions by  
18 July 11.

19 MR. TOKAYER: Will be -- could we make a  
20 closing argument in all events -- this is in addition to  
21 a closing argument?

22 THE COURT: Is there any purpose that if you're  
23 going to have an opportunity to brief it?

24 MR. TOKAYER: Yes, I think so. I think I will  
25 be able to say things in the closing that may not come in

Proceedings

1 through a short brief. I don't see the need for a post-  
2 hearing memorandum. The evidence is in, arguments will  
3 be made. It will be just --

4 THE COURT: Well I've already --

5 MR. TOKAYER: -- busy work.

6 THE COURT: I've already ruled that I do want  
7 post-hearing submission because I think it will be useful  
8 to have citations. I anticipate that there will be a  
9 written opinion, since we're talking about a report and  
10 recommendation. I think it would be useful to have  
11 submissions from the parties with citations to the  
12 record.

13 MR. MEHLMAN: Your Honor, if I may? With the  
14 post-trial briefing, is the Court also requesting that we  
15 put in proposed designations at that time and that we're  
16 allowed to --

17 THE COURT: No, I just said that rather than  
18 having designations, the purpose of designating portions  
19 today was so that if the other side wanted to ask  
20 questions of the witness when the witness was on the  
21 stand concerning that portion, they'd have the  
22 opportunity to do it.

23 Since it wasn't done prior to the testimony or  
24 during the testimony, I would say that either I should  
25 have them and they should be considered part of the

Proceedings

1 record in their entirety or they shouldn't be. So no,  
2 you do not have to designate portions.

3 MR. TOKAYER: Your Honor, at the beginning of  
4 the trial when I asked for an opening your Honor said  
5 that we'd have an opportunity to close and that we would  
6 do away with the opening. I think a closing would be --

7 THE COURT: All right. But it's --

8 MR. TOKAYER: -- an argument.

9 THE COURT: It's not going to be lieu of a  
10 post-hearing submission with citations to the record.

11 MR. TOKAYER: And I would just ask for  
12 additional time because I know we're going to have to get  
13 the record and --

14 THE COURT: You can order it on a daily basis.

15 MR. TOKAYER: I was hoping this would be over  
16 today. I mean --

17 THE COURT: All right. Do you want to sum up?  
18 I'll hear brief closing arguments.

19 MR. TOKAYER: Can I go first, your Honor.

20 THE COURT: Yes, it's your motion.

21 MR. TOKAYER: And I would like to discuss just  
22 the timing, your Honor, of that post-trial brief we can  
23 do it afterwards but Mr. Katz is going to be away  
24 starting next week. I have matters that I've put off for  
25 this hearing. If your Honor would permit --



Mr. Tokayer - Summation

1 THE COURT: This is going to be a legal  
2 document. I don't expect Mr. Katz to be involved in its  
3 preparation.

4 MR. TOKAYER: I also like to have clients  
5 involved but my schedule also just will not permit --  
6 could we have until the end of July or the beginning of  
7 August?

8 THE COURT: You're not going to -- no, I can't  
9 do that. If you want to get a decision this summer, no.

10 MR. TOKAYER: Okay. May I sit or do you want  
11 me to stand?

12 THE COURT: Either way. It's up to you.

13 MR. TOKAYER: Thank you for your attention,  
14 your Honor. The evidence has shown that QBC has  
15 certainly violated the order of Judge Weinstein. In  
16 March of 2011, QBC revised the A to Z Guide from what it  
17 was in 2010 to reflect that henceforth Kosher Sports will  
18 be banned from operating at Citi Field on Fridays and  
19 Saturdays in disregard of Judge Weinstein's order that  
20 QBC take no action directly or indirectly with respect to  
21 the time or method of sale of Kosher Sports Products at  
22 Citi Field. The evidence is uncontroverted that that A  
23 to Z Guide was revised in 2011.

24 Number two, in April of 2011, QBC circulated  
25 the 2011 Guest Services Handbook reflecting that Kosher

## Mr. Tokayer - Summation

1 Sports be banned from operating at Citi Field on Fridays  
2 and Saturdays in disregard of Judge Weinstein's order,  
3 that QBC take no action directly or indirectly with  
4 respect to the time or method of sale of Kosher Sports  
5 products at Citi Field.

6 Three, in September of 2009, after  
7 Judge Weinstein's order, unbeknownst to Kosher Sports, it  
8 was QBC who demanded that Kosher Sports operate its stand  
9 on the promenade level for the Pittsburgh series to KSI's  
10 detriment in disregard of Judge Weinstein's order that  
11 QBC take no action directly or indirectly with respect to  
12 or affecting the time or method of sale of Kosher Sports  
13 products at Citi Field.

14 And four, despite Judge Weinstein's order, QBC  
15 continued its efforts which began in March of 2010 to  
16 replace Kosher Sports with other kosher vendors and  
17 sought to enlist Aramark to terminate Kosher Sports at  
18 Citi Field all together in direct violation of the  
19 Court's order and it's clear directive on August 13, that  
20 QBC not attempt to influence anybody to stop Kosher  
21 Sports from operating at Citi Field.

22 Mr. Funk himself testified that in the fall of  
23 2010, efforts were made to try to terminate Kosher  
24 Sports. Mr. Kleckner testified about the efforts made to  
25 terminate Kosher Sports' relationship at Citi Field and

## Mr. Tokayer - Summation

1 Mr. Landeen was not truthful on the stand when he said  
2 that there were no discussions about terminating Kosher  
3 Sports in the fall of 2010. That is belied by the  
4 testimony of both Mr. Kleckner and Mr. Funk. And it's  
5 belied by the minutes which he tried to explain away but  
6 failed.

7           You heard from Mr. Landeen that all the efforts  
8 to try to get rid of Kosher Sports were a contingency  
9 plan. Where's the evidence that John Katz and Kosher  
10 Sports tried or wanted to leave Citi Field? There's no  
11 one document from Mr. Katz evidencing that. There's not  
12 one internal e-mail or document in the records of Aramark  
13 or the records of QBC showing that Mr. Katz ever  
14 threatened.

15           In fact, the evidence is that they, QBC, wanted  
16 Mr. Katz out. Is a contingency plan credible? Mr.  
17 Landeen said that he learned about Mr. Katz's desire to  
18 leave from Peter Helfer. Pete Helfer was the individual  
19 who actually on May 10, 2010, said that he wanted to get  
20 rid of Kosher Sports. Is that an e-mail of somebody who  
21 is afraid of Kosher Sports walking? That's an e-mail of  
22 someone who is trying to get Kosher Sports out. And that  
23 person is the person who Mr. Landeen claims he heard  
24 about Mr. Katz's threat to leave, it came from  
25 Mr. Helfer.

## Mr. Tokayer - Summation

1           Now of course it's not believable that Kosher  
2 Sports desired to leave Citi Field at any time. Mr. Katz  
3 filed this lawsuit in order to stay at Citi Field. He  
4 had been terminated unilaterally by the Mets in May and  
5 he filed this lawsuit and argued that he had been  
6 wrongfully terminated, that he wanted to stay.

7           And then in August, he filed for an injunction,  
8 for the very purpose of staying and continuing to operate  
9 at Citi Field. There's no evidence that Mr. Katz ever  
10 wanted to leave. No evidence that there was ever a  
11 contingency plan and, in fact, the discussions between  
12 Aramark and QBC in the fall of 2010 were directed not at  
13 trying to find an alternative to Mr. Katz, because of  
14 Mr. Katz's threat to leave but because they wanted  
15 Mr. Katz terminated and the evidence will show and our  
16 post-trial briefs will show that that plan had been  
17 hatched by Mr. Landeen as early as March of 2010 at a  
18 time when Kosher Sports was not in breach of its  
19 agreement with QBC, nor was it a breach of its agreement  
20 with Aramark.

21           And the bottom line is that Mr. Katz never did  
22 leave, so that the threat that somehow he wanted to leave  
23 is just not credible.

24           In fact, as you heard from the tapes,  
25 Mr. Kleckner himself said that the Mets had already

Mr. Tokayer - Summation

1 planned this defense from the beginning. Well, Mr. --

2 THE COURT: Again, that is not -- cannot be  
3 offered for the truth.

4 MR. TOKAYER: Yes. I'll move on, your Honor.  
5 In addition to the four ways that I just outlined in  
6 which I believe that it's clear that QBC has violated  
7 Judge Weinstein's order, on April 13, 2011 for the first  
8 time, Aramark barred Kosher Sports from operating at Citi  
9 Field on Fridays and Saturdays. This also constitutes a  
10 violation of Judge Weinstein's order. Judge Weinstein  
11 enjoined QBC, its officers, managers, employees,  
12 successors, assigns and all persons acting on its behalf  
13 from taking any action directly or indirectly with  
14 respect to or affecting the time or method of sale of  
15 Kosher Sports products at Citi Field.

16 Aramark acted on behalf of QBC when it banned  
17 Kosher Sports from operating on Fridays and Saturdays at  
18 Citi Field as a matter of law, as a matter of contract,  
19 and as a matter of fact. As a matter of law, QBC and  
20 Aramark, your Honor, are in the words of Dave Howard,  
21 Executive Vice President of QBC and an attorney, true  
22 joint venture partners. They operate the concessions at  
23 the ballpark jointly. They share profits and losses.  
24 They meet weekly and confer virtually daily. They  
25 negotiate the terms of each other's agreements. They

Mr. Tokayer - Summation

1 coordinate strategy, they run press releases by each  
2 other.

3 So when Aramark banned Kosher Sports from  
4 operating at Citi Field, it acted on behalf of QBC as a  
5 matter of law.

6 THE COURT: So you're saying that even if QBC  
7 had absolutely -- I know you've argued that they were  
8 involved and that it was their decision, but you're  
9 saying that as a matter of law, even if they had done  
10 nothing, that Aramark's actions would be attributed to  
11 QBC?

12 MR. TOKAYER: As a matter of law, as a matter  
13 of contract and as a matter of fact. I'm now saying that  
14 as a matter of law.

15 THE COURT: Well if that's your position, then  
16 you certainly have issues that need to be addressed in  
17 your post-hearing brief.

18 MR. TOKAYER: Yes, your Honor. My next  
19 argument from the contract refers to usage agreement, so  
20 I would ask Mr. Katz to exit just for a moment.

21 THE COURT: All right.  
22  
23  
24  
25

## Mr. Tokayer - Summation

1 MR. TOKAYER: And finally, your Honor, we  
2 believe that the facts -- Aramark's conduct from barring  
3 Kosher Sports from operating at Citi Field on Fridays and  
4 Saturdays was, in fact, undertaken by Aramark on behalf  
5 of the Mets. The evidence shows that QBC had the motive  
6 and opportunity to influence Aramark's conduct and did,  
7 in fact, Aramark's conduct.

8 QBC's motive could not have been clearer. Not  
9 only did QBC want Kosher Sports not to sell on Fridays  
10 and Saturdays as we saw from their e-mails dated March  
11 '09, February 2010 and May of 2010, they wanted to get  
12 rid of Kosher Sports and John Katz all together as you  
13 see from the e-mails dated May 2010, April and May.

14 THE COURT: Now under your theory, they have  
15 the right -- that's a decision within their discretion.

16 MR. TOKAYER: They had a ten year contract with  
17 Kosher Sports, QBC, with no limitation as to events or  
18 times or days of operation. So QBC could not get rid of  
19 Kosher Sports. They needed Aramark to do their dirty  
20 work. And that's what Aramark did. That's the motive.

21 THE COURT: Well, KSI is still there.

22 MR. TOKAYER: KSI is still there, yes, as of  
23 today. And thanks to Judge Weinstein's order.

24 QBC certainly had the opportunity to influence  
25 Aramark through weekly, if not daily contacts with

## Mr. Tokayer - Summation

1 Aramark as Mr. Funk and Mr. Landeen both testified. QBC  
2 actually influenced Aramark. First we've established  
3 that Aramark was aware of QBC's position on Friday and  
4 Saturday sales. I established that through Mr. Landeen's  
5 testimony. He said that he relayed to Aramark QBC's  
6 position on Friday and Saturday sales. And both Mr. Funk  
7 and Mr. Kleckner admitted early on to knowing about QBC's  
8 position with respect to Kosher Sports' operation on  
9 Fridays and Saturdays.

10 And you heard Mr. Landeen say -- and there's an  
11 e-mail in which it makes it clear that Aramark's -- that  
12 it was Aramark's duty to take what QBC wanted into  
13 account as they performed services at Citi Field.

14 And by the way, we've seen that there's  
15 precedent for Aramark hiding the fact that the Mets  
16 influenced their activities. In September of 2010, when  
17 Mr. Katz Aramark to allow him to close K-4-28 on the  
18 promenade level, Mr. Funk the next day said no, without  
19 telling Mr. Katz that it was really the Mets who dictated  
20 that answer.

21 In that instance we learned that it was QBC,  
22 only later through internal e-mails that the Mets and  
23 Aramark at that time hid from Kosher Sports. And we  
24 submit that's what happened here, that it was QBC behind  
25 the scenes was telling Aramark exactly what to do.



## Mr. Tokayer - Summation

1 Aramark knew the Mets' position and when they implemented  
2 it, there were being influenced and were only doing what  
3 QBC wanted.

4 But here we also have further and direct  
5 evidence of QBC's influence of Aramark's conduct. On  
6 August 13, 2010, just hours after the injunction by  
7 Judge Weinstein issued, Mr. Landeen e-mailed, called and  
8 left messages for Aramark. And what he admitted at his  
9 deposition was that he called Clint Westwood (sic), who  
10 was the boss -- Clint Westbrook who was the boss, and  
11 admitted telling him to keep the status quo with respect  
12 to Kosher Sports. Keep the status quo.

13 The status quo was no Friday and Saturday  
14 operations. Mr. Landeen's signal to Aramark could not  
15 have been clearer and we submit that this alone shows  
16 QBC's influence of Aramark's ultimate action in barring  
17 Kosher Sports from Citi Field on Fridays and Saturdays.

18 And Rich Gray, in January 2011, also in an  
19 unguarded moment testified that it was Aramark who was  
20 waiting on the Mets for the decision with respect to  
21 Friday and Saturday sales. He was waiting for the  
22 decision --

23 THE COURT: I'm sorry. Where is that  
24 testimony?

25 MR. TOKAYER: That testimony was from Mr. Grey

Mr. Tokayer - Summation

1 himself who remembered that that's what he said on  
2 January 6, 2011 in the meeting with Mr. Katz. Mr. Katz  
3 testified as to what Mr. Grey said and Mr. Grey also  
4 remembered. What Mr. Grey and Mr. Katz testified to is  
5 that they were waiting on the decision from the Mets and  
6 that it was the Mets --

7 THE COURT: I'm not sure -- I'll have to check  
8 the transcript.

9 MR. TOKAYER: Yes. Now the other evidence of  
10 QBC's influence, we submit, is just as strong. If  
11 Aramark was not acting at the Met's behalf -- behest, why  
12 before the injunction was issued was it always QBC and  
13 never Aramark who unilaterally acted to stop Kosher  
14 Sports from operating on Fridays and Saturdays? Kosher  
15 Sports always communicated with the Mets about Friday and  
16 Saturday sales.

17 And when Mr. Kleckner started at Citi Field,  
18 the resident district manager, nobody at the Mets even  
19 bothered to tell him about the issue, even though  
20 Mr. Funk knew about it. And, in fact, the events of May  
21 2010 with Mr. Funk are particularly telling because once  
22 he heard that Kosher Sports was interested in operating  
23 on Fridays and Saturdays in May of 2010, his only  
24 reaction was to inquire as to what the Mets wanted. And  
25 as Tom Funk said, he just didn't want to get involved

## Mr. Tokayer - Summation

1 because it was the Mets' decision and not Aramark's.

2 If Aramark was not acting on the Mets' behalf,  
3 why does Aramark let Kosher Sports operate on Fridays and  
4 Saturdays at Lincoln Financial Field in Philadelphia and  
5 M&T Bank in Baltimore? The only difference between those  
6 two venues and Citi Field is that at those venues, Kosher  
7 Sports has no sponsorship agreement with the ball club.  
8 It has only a contract with Aramark who lets it and asks  
9 it to sell on Fridays and Saturdays.

10 At Citi Field, Aramark has a partner, the Mets.  
11 So, of course, when Aramark bars Kosher Sports from  
12 operating at Citi Field on Fridays and Saturdays, it's  
13 the Mets' position that they are parroting. It's not  
14 Aramark that's behind that decision. It's the Mets. And  
15 if it was not Aramark, then Aramark was not acting at the  
16 Mets' behalf, your Honor, why did Aramark give  
17 inconsistent reasons for its decisions in April of 2011?  
18 I argued this before.

19 Mr. Kleckner says it was credibility and  
20 integrity. That reason is absent from his April 7 e-mail  
21 to Mr. Katz, and it's absent from Lowenstein Sandler's  
22 April 19 letter to Judge Weinstein.

23 We submit, your Honor that Aramark's so-called  
24 decision which was made sometime after April 6, 2011  
25 because on September -- on April 6, 2011, Mr. Kleckner

## Mr. Tokayer - Summation

1 told Mr. Katz that he was not saying no to Friday and  
2 Saturday sales. That that was a decision and a reason  
3 made up after the fact. There's no scrap of evidence as  
4 to that reason prior to this lawsuit. There's no scrap  
5 of evidence ever in which Aramark ever said to Mr. Katz  
6 they had any problem with credibility or integrity or the  
7 Friday and Saturday sales. It was made up after April 6,  
8 2011 to conform to what the Mets wanted.

9 THE COURT: I'm sorry. What was made up after  
10 April 6?

11 MR. TOKAYER: This reason that somehow  
12 Mr. Kleckner had a problem with the credibility and  
13 integrity of Kosher Sports' operations. Yes.

14 THE COURT: It was in the January --

15 MR. TOKAYER: The January 11, he said that he  
16 had a position. He said Mr. Weigert had a position but  
17 he did not say no on January 6, 2011. And in fact, Mr.  
18 Grey was saying that they were still waiting on a  
19 decision from the Mets. And that on April 6, 2011 when  
20 Mr. Katz and Mr. Kleckner had that discussion, because  
21 now the rubber hit the road and April 8 was upon them.  
22 At that point, Mr. Kleckner said to Mr. Katz, I'm saying  
23 no to April 8 because we should have had this  
24 conversation two weeks ago. But I'm not saying no to  
25 future Friday and Saturday sales. I'll speak to the

## Mr. Tokayer - Summation

1 rabbi. I'll speak to you. I'm just saying no because on  
2 April 6, he claimed he didn't have sufficient notice.

3 And by the way, the claim that he didn't have  
4 sufficient notice, Mr. Kleckner was advised by me back on  
5 August 27, 2010, in no uncertain terms that we intended  
6 to operate on Fridays and Saturdays and he did not  
7 respond. He did not answer. He did not object. And  
8 whatever he said to Mr. Katz on January 6, 2011 was just  
9 talk because on April 6, 2011, he still wasn't saying no  
10 to Mr. Katz with respect to Friday and Saturday sales.  
11 And I submit that when his letters -- when his lawyers  
12 write a letter to the Court, they don't even mention the  
13 fact of credibility or integrity. They come up with two  
14 other reasons because these are all after the fact  
15 reasons being made up to justify a decision that the Mets  
16 had given and had insisted that they make.

17 And, in fact, of course the credibility,  
18 integrity answer doesn't make any sense at all for  
19 Aramark who permits Kosher Sports to operate at other  
20 venues on Fridays and Saturdays.

21 Moreover, if it was really Aramark's decision  
22 and not QBC's, why would Tom Funk and Clint Westbrook  
23 have reacted the way they did after reading about the  
24 Mets' position in this action? You'll recall that they  
25 saw the article on August 13 or August 14 about the

## Mr. Tokayer - Summation

1 hearing in front of the judge and they both reacted the  
2 same way. Why are the Mets throwing us under the bus?  
3 Throwing under the bus means to blame someone else for  
4 something that you really did.

5           When QBC blamed Aramark for stopping Kosher  
6 Sports from selling on Fridays and Saturdays, that's  
7 because it was the Mets' decision and not Aramark's  
8 decision. And they want you to believe that now it's  
9 Aramark's decision and not the Mets. At that time, back  
10 in August of 2011 and 2010, it was the Mets' decision and  
11 Aramark knew it. And in April of 2011, it was Mets'  
12 decision and not Aramark's.

13           The only difference is that in April of 2007,  
14 of course, your Honor, it took a while but the Mets  
15 finally prevailed upon Scott Kleckner to take the fall  
16 for them. They wouldn't do it back in August of 2010.  
17 They wouldn't do it in January 2011 when Mr. Katz spoke  
18 to Mr. Kleckner and Mr. Grey. They wouldn't even do it  
19 in April of 2011.

20           But on August 13, 2011, as my letter to your  
21 Honor says, that's the first time we ever heard that they  
22 were going to stop us from all future Friday and Saturday  
23 sales and it's at that point that Mr. Kleckner dug in his  
24 heels and decided to take the fall for the Mets, which by  
25 the way is not surprising given what Mr. Kleckner says

## Mr. Tokayer - Summation

1 was the partnership between Aramark and the Mets. Having  
2 to choose in April of 2011 -- of course Aramark was going  
3 to choose the Mets, their partner.

4           The Court should reject Mr. Kleckner's self-  
5 serving testimony that this decision was his and  
6 Aramark's. In addition to being self-interested, his  
7 testimony is not credible. He says he always opposed  
8 Kosher Sports operating on Friday and Saturday. Yet,  
9 there's not one scrap of written evidence supporting that  
10 testimony. And every time that Mr. Kleckner had an  
11 opportunity to communicate that position to Mr. Katz, he  
12 failed to. You have that Kosher Sports advised Aramark  
13 on August 27, 2010 of its intent to operate on  
14 Friday and Saturdays, moving forward we would have  
15 thought Mr. Kleckner would immediately respond with his  
16 longstanding credibility, integrity objection. He did  
17 not respond that way. He didn't object at all.

18           On April 6, 2011, when Mr. Katz and he  
19 discussed opening day, you would have thought Mr.  
20 Kleckner at that point would have come up with his  
21 longstanding credibility, integrity objection. He did  
22 not. In fact, he said he was not going to say no to  
23 Kosher Sports for future Friday and Saturday sales.

24           And as I mentioned on April 19, in the letter  
25 from Lowenstein Sandler to the Court, that reasoning is

## Mr. Tokayer - Summation

1 also absent. And, of course, Mr. Kleckner's credibility  
2 and integrity objection itself lacks credibility and  
3 integrity because was Mr. Kleckner himself was at Lincoln  
4 Financial Field involved in the decision to ask Kosher  
5 Sports to operate on Fridays and Saturdays. Again, the  
6 only difference being that at Lincoln Financial Field,  
7 Mr. Kleckner did not have the Mets telling him what to  
8 do.

9           And his answer to your Honor's questions I  
10 submit are not believable. He said that he didn't think  
11 that they actually let Kosher Sports operate in Lincoln  
12 Financial Field. Well that testimony is belied by Mr.  
13 Katz's testimony and Tom Funk's. He understood that they  
14 were operating at Lincoln Financial Field. They didn't  
15 only let him, they asked him. And that's because the  
16 Mets weren't involved.

17           In sum, the Court must find that Aramark and  
18 QBC disregarded and violated Judge Weinstein's orders.  
19 The Court should impose sanctions including costs  
20 relating to this hearing and a fine to deter such  
21 contumacious in the future.

22           In addition, QBC should be directed to purge  
23 themselves of the contempt and Aramark, as well by  
24 refraining from interfering with Kosher Sports' operation  
25 on Fridays and Saturdays and during all events at Citi



Mr. Tokayer - Summation

1 Field as to which admission is made available to the  
2 general public.

3 THE COURT: Well what you're now asking is an  
4 affirmative order directing Aramark to allow your client  
5 to operate u=on Fridays and Saturdays. Judge Weinstein  
6 specifically declined to do that.

7 MR. TOKAYER: He said that they were not to  
8 interfere with our operations on Fridays and Saturdays.  
9 And I'm saying that QBC did interfere and that Aramark  
10 acting on their behalf interfering, they should both stop  
11 interfering which yes, would result in Kosher Sports'  
12 operating on  
13 Fridays and Saturdays at Citi Field.

14 THE COURT: Well I think another thing you  
15 should address is the Court's authority to order a non-  
16 party to do anything. The -- in a situation where the  
17 preliminary injunction that was sought, was sought  
18 against the defendant and now you're asking for relief  
19 against a non-party.

20 MR. TOKAYER: Yes.

21 THE COURT: And I don't know that there's any  
22 case law to support that.

23 MR. TOKAYER: I will look at that. It's -- the  
24 injunction was to QBC and anyone acting on its behalf.  
25 Aramark --

Mr. Mehlman - Summation

1 THE COURT: I certainly read that to mean  
2 representatives of QBC and having read the transcript of  
3 the proceeding before Judge Weinstein, I believe that  
4 that is what he intended, as well.

5 MR. TOKAYER: Your Honor, I would --

6 THE COURT: Because at that time, Mr. Mehlman  
7 said that -- he said it's not QBC's decision, it's  
8 Aramark's to which the Judge said, "Then it has no affect  
9 on your client."

10 MR. TOKAYER: Right. And I believe that that  
11 representation by Mr. Mehlman to the Judge was a  
12 misrepresentation because the evidence is now clear that  
13 the Mets -- he said that the Mets never had anything to  
14 do with the sale, to who to sell, to when to sell.

15 THE COURT: Well I understand that. And the  
16 issue before me --

17 MR. TOKAYER: And it turns out that that was  
18 wrong.

19 THE COURT: -- is whether the Mets violated  
20 that order. But now you're proposing something beyond  
21 that.

22 MR. TOKAYER: Yes. And Aramark was made aware  
23 of the order and I believe that there is law and I will  
24 look into that, as to whether or not anyone who is aware  
25 of the Court injunction also cannot participate in

Mr. Mehlman - Summation

1 violating it with the person to whom it was initially  
2 directed. Thank you.

3 THE COURT: All right.

4 MR. MEHLMAN: Your Honor, unaccustomed as I am  
5 to saying that I'll rely upon our papers, I don't think  
6 it's appropriate at this hour to make an argument. As  
7 the Court is well aware, I'm not usual not to move  
8 forward with an argument but we'll reply upon  
9 (indiscernible).

10 THE COURT: Well I'd be interested in hearing  
11 from you now.

12 MR. MEHLMAN: Sure, your Honor.

13 THE COURT: That way if I have any questions I  
14 hopefully can get responses.

15 MR. MEHLMAN: Not a problem, your Honor. Your  
16 Honor, it's been the defendant's position from day one  
17 that they did not in any way violate the restraining  
18 order or the injunction of Judge Weinstein. Judge  
19 Weinstein asked during the course of the hearing to which  
20 the injunction was issued for the Mets not to be involved  
21 specifically in any way affecting the manner and the time  
22 in which KSI operates. The reasoning --

23 THE COURT: By the way who drafted that, the  
24 order?

25 MR. MEHLMAN: The Judge. The Judge drafted it.

Mr. Mehlman - Summation

1 THE COURT: The Judge drafted it?

2 MR. MEHLMAN: There was --

3 THE COURT: Because at the end of the  
4 proceeding he directed counsel to confer and come up with  
5 proposed language. Was that yet another instance in  
6 which you couldn't agree on anything?

7 MR. MEHLMAN: That's correct, your Honor. But,  
8 your Honor, the purpose of the motion that brought upon  
9 the injunction was KSI's fear that QBC would not have --  
10 would have KSI thrown out of the stadium, would not let  
11 them operate any further in the stadium and that's what  
12 brought on the injunction.

13  
14 And the purpose of the injunction was for the  
15 Judge to get involved and the Judge basically said, okay,  
16 during the pendency of this trial and this litigation,  
17 Mets, you can't throw them out. He's going to stay it  
18 out. He's got his Aramark contract. He has to remain.  
19 That's the reason why the Judge issued the injunction.

20 The Judge did not see the issuing of the  
21 injunction in any way as a penalty to QBC. In fact, the  
22 Judge basically said well if it's not up to you whether  
23 he operates on Friday and Saturday or if you don't take  
24 any issue with him operating on Friday and Saturday, then  
25 what do you care about the injunction? He's got his

Mr. Mehlman - Summation

1 Aramark (indiscernible). Let him deal with Aramark. And  
2 that's why the Judge specifically said, "Are you  
3 Aramark?" I said "No, I'm not Aramark. I'm QBC.  
4 Aramark's not named."

5 THE COURT: And in fact the whole reasoning for  
6 the injunction or the bringing of the injunction was  
7 based upon communications by Mr. Tokayer in which  
8 Mr. Tokayer was fearful that KSI will be thrown out of  
9 the stadium.

10 Your Honor, it's clear --

11 THE COURT: Well whether that was what  
12 motivated the motion or not, the fact of the matter is  
13 that the order is not so limited.

14 MR. MEHLMAN: It's not so limited but the  
15 purpose of the order was that the Mets should not affect  
16 the hours of operation and the times of operations of  
17 KSI. Your Honor, there's no evidence that first of all,  
18 the hours of operation, the days of operation, were  
19 affected by the Mets after August 2011 -- 2010, when that  
20 injunction was issued, your Honor. Mr. Katz continues to  
21 operate in the stadium. Mr. Katz continues to operate in  
22 the carts.

23 THE COURT: Well you're not suggesting that it  
24 was intended to -- that the only purpose of this was to  
25 preserve the status quo.

## Mr. Mehlman - Summation

1 MR. MEHLMAN: I believe that it was Judge  
2 Weinstein's position during the hearing. Judge  
3 Weinstein's position was basically hands off, let Aramark  
4 make its decisions, whatever the decisions are and let  
5 the Mets -- you do not get involved in its day to day  
6 operations. You do not get involved in his hours of  
7 operations. That's what Judge Weinstein said. He said  
8 leave it the way it is. That's exactly what he said.  
9 That was exactly the purpose.

10 He was fearful, based upon Mr. Tokayer's motion  
11 that the Mets would throw him out and the Judge did not  
12 want him thrown out during the pendency of the  
13 litigation. And he's not been thrown out. He continues  
14 to operate.

15 The testimony is very, very clear, your Honor,  
16 that at no time did the Mets ask Aramark to terminate  
17 KSI. In fact, Aramark did not terminate KSI. In fact,  
18 Aramark continues to allow KSI to operate.

19 THE COURT: Well are you suggesting that if QBC  
20 sought to influence the decision about whether or not KSI  
21 would be permitted to operate on Fridays and Saturdays  
22 that that would not be a violation of the order?

23 MR. MEHLMAN: Perhaps that would be but they  
24 did not do that, Judge. There's no evidence to  
25 suggest --

Mr. Mehlman - Summation

1 THE COURT: Well that was all that I was  
2 asking.

3 MR. MEHLMAN: Yes, your Honor, perhaps it would  
4 be. But there is no evidence to suggest that QBC's  
5 position regarding Fridays and Saturdays influenced  
6 Aramark's position. They may have known of QBC's  
7 position and they understood that hey, the Mets don't  
8 want him to operate on Friday and Saturday, but Mr.  
9 Kleckner made it clear that they had their own  
10 independent reasoning for not operating on Friday and  
11 Saturday. And it --

12 THE COURT: Well the order is an injunction  
13 against influencing or attempting to -- they're enjoined  
14 from taking any action directly or indirectly with  
15 respect to or affecting the time or method of sale of  
16 KSI's products at Citi Field.

17 MR. MEHLMAN: It --

18 THE COURT: So --

19 MR. MEHLMAN: And there's been no evidence  
20 during the course of this hearing on the record that the  
21 Mets directly or indirectly attempted to influence. By  
22 asking a company that runs the concession at Citi Field  
23 whether they're going to terminate a specific  
24 concessionaire, that is not inappropriate. They need to  
25 know that information.

## Mr. Mehlman - Summation

1           QBC runs the ballfield. QBC's in charge to  
2 make sure that all the guests have what they need, that  
3 all the guests are provided for. And if a Kosher  
4 provider is going to bail or if Aramark will decide that  
5 they no longer want the Kosher provider there any longer,  
6 then it's something that QBC needs to know. Mr. Landeen  
7 has an obligation to have meetings with Aramark on a  
8 weekly basis. There's nothing in the injunction that  
9 bars Mr. Landeen to have those meetings with Aramark and  
10 to question if there any issues with the Kosher provider,  
11 just to insure they're --

12           THE COURT: What about the --

13           MR. MEHLMAN: -- maintaining the Kosher  
14 concessions at the ballpark.

15           THE COURT: What about the A to Z Guide and the  
16 Guest Service Handbook?

17           MR. MEHLMAN: Well, because he's not operating  
18 on Friday and Saturday. So if a guest is going to come  
19 and they're going to look for the Kosher concession or  
20 assume that the Kosher concession is operating at that  
21 time, they're going to go to a stand that's not selling  
22 Kosher food. They're going to go to the stand that is  
23 not -- that is being run by somebody else other than KSI  
24 and not know the difference.

25           The purpose of those guides is to allow the



Mr. Mehlman - Summation

1 guests to know what's going on. And they were operating  
2 on Friday and Saturday at the time, when it was issued.  
3 It's not influencing anybody. They weren't operating.

4 And that was a decision that Aramark made  
5 independently of the Mets. If I'm a guest at Citi Field  
6 and I'm looking for a concession, I should know where the  
7 concessions are. And KSI wasn't operating.

8 All those guides do is inform the public of the  
9 fact and the fact is that on Fridays and Saturdays these  
10 concessions run by Mr. Katz, Kosher Sports was not  
11 operating. I believe the fans are entitled to know that.  
12 And that's all that was done. Those guides are not  
13 internal Aramark guides that Aramark in some fashion  
14 relies upon in making decisions. Those are fan guides.  
15 Those are guides that are posted in the website or the  
16 Mets --

17 THE COURT: They're not Aramark documents.

18 MR. MEHLMAN: They're not Aramark documents at  
19 all.

20 THE COURT: They're QBC documents.

21 MR. MEHLMAN: They're not Aramark documents at  
22 all. They're a --

23 THE COURT: QBC --

24 MR. MEHLMAN: -- Guest Service Handbook.

25 THE COURT: QBC or Mets --

300

Mr. Mehlman - Summation

1 MR. MEHLMAN: That's correct.

2 THE COURT: -- documents?

3 MR. MEHLMAN: Yes. They're Guest Service  
4 Handbooks.

5 THE COURT: What did they say in prior years?

6 MR. MEHLMAN: I believe that there was  
7 testimony that in 2010, at least in one of them, did not  
8 say anything. But, your Honor --

9 THE COURT: It didn't say anything about kosher  
10 food or didn't say anything about --

11 MR. MEHLMAN: I believe the testimony --

12 THE COURT: (Indiscernible).

13 MR. MEHLMAN: -- I believe the testimony that  
14 was elicited or attempted to be elicited, was that it did  
15 not state the hours of operation.

16 But, your Honor, these Guest Services Guides  
17 are also important fr when guests come to the stadium and  
18 ask whether it's a Citi Field employee or an Aramark  
19 employee, where is a kosher vendor? That individual has  
20 a right to give a frank response and a truthful response.  
21 If it didn't state that in the -- then they say okay, go  
22 up to, you know, a certain location, that's where the  
23 kosher vendor's at. If it's Friday and Saturday, it's  
24 not accurate. That's not appropriate. They're giving  
25 the wrong information to a guest. That's the purpose of

## Mr. Mehlman - Summation

1 this.

2           Because they wanted to insure that they were  
3 giving the right information, that is not a violation of  
4 the Judge's order. Specifically, based upon the Judge's  
5 discussions on the record, before issuing the order, I  
6 would be surprised to learn that Judge Weinstein review  
7 giving a guest the appropriate information about where  
8 they can or cannot purchase certain kinds of food, would  
9 in any way directly or indirectly affect the mannerism or  
10 the hours of Kosher Sports' operations.

11           Mr. Kleckner specifically testified that the  
12 Mets never asked him to terminate KSI. In fact, if you  
13 look in Mr. Kleckner's testimony, Mr. Kleckner explained  
14 that not just in January of 2010 for the first time, but  
15 dating back much earlier than that, Mr. Kleckner had  
16 conversations with Mr. Katz about what Aramark's position  
17 was regarding operating on Friday and Saturday.

18           And there were two reasons why Aramark did not  
19 want KSI to operate on Friday and Saturday. There was  
20 Mr. Kleckner's reason that he was concerned that this  
21 would affect the credibility of the products being served  
22 during the rest of the week which is something that  
23 Mr. Kleckner was greatly concerned about and then there  
24 was the economic reason that Mr. Weigert was concerned  
25 about. And Mr. Weigert's reason was that if he wants two

Mr. Mehlman - Summation

1 extra days -- if he wants two extra days, they have to  
2 readjust the terms.

3 And to say that because in Lincoln Field he's  
4 operating, those are under different terms. There's a  
5 different amount of games. That's comparing apples and  
6 oranges. Football games, there aren't eighty football  
7 games, your Honor. You heard the testimony from Mr.  
8 Katz. There are ten home games. And the terms of those  
9 agreements are different than the terms of the agreements  
10 here.

11 And Mr. Katz operates under the Aramark  
12 agreement. And under the Aramark agreement, Aramark  
13 decides the hours of operation. And Aramark is free to  
14 tell them when he can operate and when he can't operate.  
15 And that's exactly what they did. They told them based  
16 upon the terms of your contract, you're not going to  
17 operate on Friday and Saturday. If you want to readjust  
18 them, if you want to change it, perhaps that is something  
19 that we may want to discuss; perhaps. But not under the  
20 current contract.

21 And you heard Mr. Kleckner, there's economic  
22 issues --

23 THE COURT: Well that goes to Mr. Weigert's --  
24 is it Weigert or Weigert?

25 MR. MEHLMAN: It's Weigert.

Mr. Mehlman - Summation

1           THE COURT: -- Weigert's objection but  
2 Mr. Kleckner said that his -- it was the integrity  
3 argument, why is that any different at Citi Field than it  
4 would be in Philadelphia or Baltimore, wherever the  
5 other --

6           MR. MEHLMAN: I think that Mr. Kleckner  
7 answered that truthfully and based upon his knowledge of  
8 the guests that are coming to Citi Field. He believes  
9 and I believe accurately, noting from what's been said  
10 about the story on the web, that there are consumers,  
11 many consumers, in the New York Metropolitan area who are  
12 very, very observant and if they found out that this  
13 stand was operating on Friday and Saturday, they would  
14 not use the stand during the rest of the week.

15           And that goes to the credibility issue of  
16 what's the purpose of having a kosher stand catering to a  
17 certain niche, to a certain community even though others  
18 may purchase from them, because the lines or shorter or  
19 for whatever reason, they think it's a better product or  
20 a cleaner product or a safer product, those people who  
21 are relying upon the kosher status of it will not use it  
22 Monday through Thursday. And that's a decision that  
23 Aramark has a right to make. And Aramark has a right to  
24 make that decision independently based upon the  
25 clientele, based upon the guests and based upon their

Mr. Mehlman - Summation

1 assessment of a particular group who are coming to the  
2 ballpark. And Mr. Kleckner made that decision.

3 And certainly it was also an economic issue.  
4 Mr. Kleckner -- Aramark makes more money when they  
5 operate on Friday night and Saturday and that's why the  
6 revenue splits between Aramark and QBC would have to be,  
7 as Mr. Weigert would say, would have to be, you know,  
8 thought out again or rethought.

9 Your Honor --

10 THE COURT: What's your response -- well I  
11 guess we should have Mr. Katz step out again.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Mr. Mehlman - Summation

1 THE COURT: You can continue.

2 MR. MEHLMAN: And as the testimony elicited by  
3 both Mr. Kleckner, Mr. Landeen, Mr. Funk, as well as  
4 Mr. Grey -- just for a moment if we could jump to  
5 Mr. Grey for a minute, Mr. Grey did not say the things  
6 that Mr. Tokayer educes Mr. Grey said.

7 If you listen to the conversation that was  
8 being used for impeachment purposes, Mr. Katz says all of  
9 that, that what Mr. Grey says is ah-hah, Mr. Grey clearly  
10 was allowing Mr. Katz to say what he wanted to say  
11 without any authority nor understanding about making any  
12 decision at all.

13 Mr. Katz clearly went into that January 6  
14 meeting with an agenda to try to gather evidence, gather  
15 statements from Aramark that in some way would support  
16 their claim before this court and this contempt  
17 proceeding and perhaps in the cash in chief. And what  
18 they did was and what Mr. Katz did was specifically speak  
19 for large intervals at a time giving his position,  
20 including saying that under the Judge's contempt -- the  
21 Judge's injunction, the Judge ruled that Aramark has to  
22 let them open on Friday night and Saturdays. No where  
23 does that appear.

24 And to say that in some fashion that that  
25 injunction says that he has a right to operate on Friday

Mr. Mehlman - Summation

1 and Saturday belies Judge Weinstein's decision, belies  
2 Judge Weinstein's discussion on the record before issuing  
3 the injunction.

4 MR. TOKAYER: Objection, your Honor.

5 THE COURT: What's the objection?

6 MR. TOKAYER: He's referring to a tape that is  
7 not in evidence and he's making arguments from it.

8 THE COURT: The tape is in evidence.

9 MR. TOKAYER: That's for impeachment purposes  
10 and it was not used for impeachment purposes.

11 THE COURT: I said that the plaintiff could,  
12 because it wasn't turned over by the plaintiff and was  
13 not listed as automatic -- it was not produced as part of  
14 automatic disclosure, that the plaintiff could not use  
15 it, except for impeachment purposes.

16 MR. MEHLMAN: I'm not using it for anything  
17 other than impeachment purposes. He tried to impeach him  
18 saying that's what he said but that's not what he said,  
19 your Honor.

20 And then just finally, your Honor, this whole  
21 idea that Aramark is being manipulated and Aramark is  
22 manipulating reasons and QBC's manipulating reasons, look  
23 it's clear QBC did not want him to operate on Friday and  
24 Saturday. What's also clear from the evidence is once  
25 the Judge issued his injunction, all the Mets cared about



## Mr. Mehlman - Summation

1 was was there going to be a kosher provider? Was Mr.  
2 Katz going to remain? Was Aramark going to get rid of  
3 Mr. Katz? Did they need to put somebody in place?

4 That's their obligation. That's all they cared  
5 about. And whether it was at meetings asking, are you  
6 still good with Katz? Is he still going to serve? Is he  
7 in breach? No, fine. Is he not? Fine. We have the  
8 contingency plan. Let's meet with some other people in  
9 case he bails. The evidence is clear that he bailed  
10 before in 2009 from NCU park and other parks that the  
11 Mets are partners in and they were concerned about that.  
12 They didn't want to show up one day and find out there's  
13 no kosher provider.

14 They did what they're obligated to do. There's  
15 no where in the injunction that bars QBC from having a  
16 contingency plan and insuring that there is something in  
17 place in case something should happen.

18 They didn't know what Aramark's position was.  
19 They didn't know if Aramark was going to keep it going.  
20 They asked. They inquired. There's nothing wrong with  
21 listing on a meeting minutes agenda, kosher update. Are  
22 you still happy with Mr. Katz? Is Mr. Katz still  
23 operating? Yes, fine. It's on the agenda. Is he in  
24 breach? No, fine. It's on the agenda.

25 That is in no way a violation at all. It's

Mr. Mehlman - Summation

1 doing what the Mets are obligated to do; to insure  
2 there's a provider of Glatt Kosher frankfurters at the  
3 stadium. And that's all they really cared about at this  
4 stage.

5 They're not getting any money at all from this  
6 relationship. He's operating without paying one dime of  
7 any of the sponsorship agreements.

8 THE COURT: Well they --

9 MR. MEHLMAN: And he's operating with impunity,  
10 your Honor. He does what he needs to do. He sells his  
11 frankfurters and there's no evidence at all, your Honor,  
12 that the Mets in any way directly or indirectly affected  
13 his hours of operation.

14 THE COURT: Well what about the cart and the  
15 promenade that he did not want to operate?

16 MR. MEHLMAN: That's a guest relations issue.  
17 And you saw the reason was not impede -- first of all,  
18 your Honor, Judge Weinstein never envisioned that as part  
19 of his injunction. Judge Weinstein's injunction was  
20 relating to the Friday night and Saturday issue. That's  
21 why it was raised. That's what was discussed and that  
22 was the issue. Judge Weinstein never envisioned that if  
23 Mr. Katz wanted to not operate a cart, not operate a  
24 cart, and the Mets wanted him to operate because there  
25 were fans that would be served by that cart, the Mets

Mr. Mehlman - Summation

1 couldn't chime in on their decision, your Honor. That  
2 was never envisioned by the injunction.

3 As the Court's well aware, that a motion to  
4 contempt, the Court can take under its advisement the  
5 purposes and the reasoning behind the issuing of the  
6 injunction. That was never raised to Judge Weinstein as  
7 a point -- at the time that the injunction was issued and  
8 certainly never contemplated by Judge Weinstein when he  
9 issued the injunction. That was a Friday night and  
10 Saturday issue. And that's why it was there. And to  
11 insure that Mr. Katz remained in the ballpark during the  
12 pendency of the lawsuit.

13 THE COURT: But you would agree that at least  
14 the language of the order would seem to apply to that  
15 situation.

16 MR. MEHLMAN: I disagree. I disagree that if  
17 the language of the order is taken in a vacuum,  
18 your Honor, not based upon the discussion on the record  
19 with Judge Weinstein and Judge Weinstein's reasoning,  
20 perhaps one may infer that but that's not the burden in a  
21 contempt hearing.

22 The burden in a contempt hearing is that the  
23 injunctive relief or the injunction must be interpreted  
24 along the lines of the reasoning behind the judge issuing  
25 the injunction. And Judge Weinstein never envisioned

Mr. Mehlman - Summation

1 that injunction being used to allow Mr. Katz not to  
2 operate a cart.

3 And the Mets had an obligation to provide the  
4 service to those individuals that were up there. You saw  
5 the reasoning. The reasoning wasn't to make Mr. Katz's  
6 life miserable. The reason was to make the guests' stay  
7 at Citi Field enjoyable. They didn't have to walk to the  
8 other side of the park to get frankfurters. Because as  
9 you heard Mr. Landeen, he gets tons of complaints. His  
10 job is not to get complaints, to insure there aren't  
11 complaints.

12 And if a cart's shut down and people are  
13 looking for these kinds of products and are told I'm  
14 sorry, for this evening, these carts are not operating,  
15 you've got to go across court to get it, that the Mets  
16 had an obligation to their fans to insure that that cart  
17 was operating, your Honor. And certainly nothing else  
18 contemplated by Judge Weinstein.

19 And in fact, it wasn't even contemplated by Mr.  
20 Tokayer because no where in his declaration nor his  
21 motion for contempt does he even reference that specific  
22 issue. This was a "red herring" that he was slipping in  
23 at this point, your Honor, to try to in some way come up  
24 with a theory of why there may be contempt when there is  
25 no other actions that fall into a -- that would in any

Proceedings

1 way violate the injunction.

2 THE COURT: Well, I assume that his response  
3 would be that the Mets are taking the position that they  
4 don't in any event control the time or method of  
5 operation KSI and yet here is an instance in which they  
6 did, whatever the motive might have been.

7 MR. MEHLMAN: Well, but they chimed in on their  
8 reasoning why they would want it opened. Ultimately, it  
9 was Aramark's decision. And that's based upon the  
10 contract.

11 THE COURT: Anything else?

12 MR. MEHLMAN: No, your Honor. Any further  
13 questions?

14 THE COURT: No, not for now.

15 MR. MEHLMAN: Thank you, your Honor.

16 THE COURT: Mr. Tokayer, did you want a brief,  
17 a very brief rebuttal?

18 MR. TOKAYER: No, I think I can address it in  
19 my papers.

20 MR. FIELD: Judge, may I speak about one  
21 procedural issue?

22 THE COURT: Yes.

23 MR. FIELD: As you know I came here and my firm  
24 has been involved in this case as a non-party. My  
25 client's been a non-party. We've been asked to

## Proceedings

1 facilitate the discovery, the brunt of which has fallen  
2 on my client, put up some witnesses, et cetera, and we  
3 did that. And I thank you for letting us come here  
4 today.

5 I was going to leave before you did the  
6 summations but I am glad I stayed because I heard  
7 something that is very troubling to me. You picked up on  
8 it. That the plaintiff is now seeking relief against  
9 Aramark. There was no notice of any relief against the  
10 non-parties.

11 THE COURT: Well I am not sure that that is  
12 what Mr. Tokayer is doing. I think what he's trying to  
13 do is attribute actions of your client to QBC. Even  
14 under my hypothetical, where assuming hypothetically that  
15 there was no attempt to influence, he was saying as a  
16 matter of law and as a matter of contract, that the  
17 actions of Aramark should be attributed to QBC.

18 But if he's going beyond that, I think maybe we  
19 should get clarification now and if so, you -- well, you  
20 haven't participated in this.

21 MR. FIELD: Judge, he went -- respectfully, he  
22 did say exactly what you said but he went further because  
23 he asked you to rewrite my client's contract with the  
24 plaintiff which is not subject to this litigation, which  
25 is not the subject of any claim. And he asked you as

## Proceedings

1 part of the relief he was seeking, in addition to all  
2 these sanctions, et cetera, to enter an order that would  
3 allow them to operate on Fridays and Saturdays.

4 That's not what the contract says. It has  
5 never said -- he's asking you to rewrite our contract.  
6 Our contract's not before the Court. The relief sought  
7 in the complaint does not address our contract, nor could  
8 it logically because we're not a party.

9 So I strongly want the Court to focus on the  
10 relief sought by the plaintiff to make sure it rises and  
11 falls with the contempt alleged against QBC. But to  
12 start to pull our contract in and say you should rewrite  
13 it, I respectfully suggest that it's well outside of your  
14 powers and authority in this matter as framed by the  
15 plaintiff.

16 THE COURT: Maybe I should have Mr. Tokayer  
17 clarify what his position is in this regard.

18 MR. TOKAYER: Yes, Aramark --

19 THE COURT: You are not seeking contempt  
20 sanctions against Aramark, I take it.

21 MR. TOKAYER: Aramark cannot interfere with  
22 Kosher Sports' operations on Fridays and Saturdays, if  
23 they're doing it on behalf of the Mets. And if they  
24 have, then yes, they're in contempt of court.

25 THE COURT: Well then we've had this proceeding

Proceedings

1 and although Aramark has provided witnesses as a non-  
2 party, they have not participated as a party to this  
3 contempt motion.

4 MR. TOKAYER: That was their choice.

5 MR. FIELD: Respectfully, I have no standing to  
6 participate. I'm not a named party. This litigation has  
7 been going on for a year and a half. If somebody wants  
8 to throw grenades at me at this late date, I deserved  
9 notice a long time ago.

10 THE COURT: Well it certainly wasn't clear to  
11 me that this was -- that the motion was directed against  
12 Aramark, as well as QBC.

13 MR. TOKAYER: I think we need to go back to the  
14 motion and the Court's order setting the hearing which I  
15 will do.

16 THE COURT: I've always treated Aramark as a  
17 non-party in this regard, a non-party witness. All  
18 right. Is there anything further with respect to the  
19 contempt hearing? Mr. Tokayer, did you want a few  
20 minutes?

21 MR. TOKAYER: No, your Honor. I'll address it  
22 in my papers. Thank you.

23 THE COURT: All right. Mr. Field, you're free  
24 to leave. I don't know whether the counsel for the  
25 parties want to address any of the other open issues. I



Proceedings

1 will say one thing, Mr. Tokayer's cross-motion for  
2 sanctions refers to a previous motion made by plaintiff  
3 on I believe it was March 7 and indicates that that  
4 motion for sanctions was still open.

5 I had no recollection that there was any open  
6 motion for sanctions. I went back and that matter was  
7 resolved in the core proceeding at the end of March and  
8 the docket entry, the minute entry specifically denies  
9 that motion. So there's no previous motion for sanctions  
10 that is still open.

11 All right. I have cross-motions now for  
12 sanctions in connection with discovery issues. Do  
13 counsel want to be heard on that?

14 MR. MEHLMAN: Does the Court want to set  
15 another date or we can address it now? It's up to the  
16 Court.

17 THE COURT: You're all here. If you want to  
18 address it --

19 MR. MEHLMAN: Your Honor, since I think we made  
20 the initial motion, if I could address the Court, from a  
21 sitting position, if I may?

22 THE COURT: That's fine.

23 MR. MEHLMAN: It's been a long day. While the  
24 entire issue regarding these recordings of the  
25 conversations that came out, there was a Friday call that

## Proceedings

1 the Court had with -- there was a Friday call that the  
2 Court had with all the parties. And during that Friday  
3 call, the Court specifically asked Mr. Tokayer whether  
4 there were any other additional recordings. And the  
5 response from Mr. Tokayer was there were no additional  
6 recordings.

7 THE COURT: Which is technically true  
8 apparently.

9 MR. MEHLMAN: Technically true, that's correct,  
10 but not the way we interpreted it, your Honor. We  
11 assumed that Mr. Tokayer was being frank when he said  
12 there were no other recordings, that there were no other  
13 conversations that were, in fact, recorded.

14 However, the Court granted portions of our  
15 motion to reopen the depositions and we, in fact, did  
16 reopen those depositions and just to make sure because  
17 there's much to be made about how questions are asked and  
18 how questions are answered during the course of this  
19 litigation, I asked Mr. Katz whether he recorded any  
20 other conversations.

21 And during the course of his testimony and in  
22 -- as stated in his testimony on the record under oath,  
23 as well as in his declaration before the Court in  
24 Mr. Tokayer's response or opposition to our motion,  
25 Mr. Katz has admitted that, in fact, there was an

## Proceedings

1 operational meeting in 2010 between himself and Aramark  
2 that he recorded.

3 And he claims that the recordings were  
4 discarded. I used the word destroyed. I don't think it  
5 makes a difference. The recordings are no longer  
6 available to review but it was during an operational  
7 meeting similar to the operational meeting that took part  
8 in 2011 where, in fact, this specific issue was not only  
9 raised but was discussed in detail.

10 And as the Court is well aware from the  
11 depositions that have been submitted to the Court, as  
12 well as the exhibits that we submitted a long with our  
13 motion, it had always -- this issue regarding whether the  
14 Mets could -- whether KSI could operate on Friday night  
15 and Saturday was raised as early as 2008 and as early as  
16 2008, Mr. Katz was contemplating legal action.

17 In fact, in a detailed letter in March 23,  
18 2009, Mr. Katz writes a letter on his letterhead to Peter  
19 Helfer of QBC and he cc's that to the general counsel.

20 And in a follow-up letter, he specifically says  
21 and that's dated April 14, 2009, "I will consult with my  
22 legal counsel as to whether to bring legal action."

23 And additionally, in January 2010, arguably  
24 almost the exact period of time where this conversation  
25 may have been taking place or probably before this

## Proceedings

1 conversation took place, once again Mr. Katz -- I'm  
2 sorry, Mr. Kestenbaum of KSI, issues a very detailed  
3 letter that would contemplate taking legal action.  
4 Additionally --

5 THE COURT: What's the -- which document is  
6 that?

7 MR. MEHLMAN: That's document exhibit number 5  
8 and then Exhibit 6, March 18, 2010, perhaps right after  
9 the conversation took place or about the same time,  
10 Mr. Katz sends an e-mail which clearly contemplates legal  
11 action whereby number three in his e-mail says,  
12 "Additionally as the agreement lacks a merger/entire  
13 agreement clause, the agreement is unintegrated."

14 That's as close as you're going to get to a  
15 legal letter or a lawyer's letter as you can get without  
16 a lawyer actually signing off on it but with the client  
17 sending it.

18 It is unconscionable that Mr. Tokayer would  
19 argue that prior -- that during this operational meeting  
20 in 2010, that litigation was not foreseeable. Clearly  
21 litigation was foreseeable at that point. Litigation  
22 arguably was foreseeable back in 2008, certainly in 2009  
23 but certainly by 2010.

24 And as litigation was foreseeable, almost point  
25 on point legal letters, threatening legal action, QBC --

## Proceedings

1 I'm sorry, KSI -- a duty to preserve the conversations.  
2 He preserved the 2011 one. He preserved the January and  
3 the April one. He didn't tell anyone about it. Provided  
4 only snippets originally, not a full transcript. It's  
5 not -- under the law, it's not up to Mr. Katz to file a  
6 self-serving declaration that says litigation was not  
7 foreseeable and nothing was discussed on those tapes that  
8 would reference this action. That's not the standard.

9           The standard is if litigation is foreseeable,  
10 then there's an obligation to preserve. Moreover, KSI is  
11 the plaintiff and the courts have been clear, when it's  
12 the plaintiff that fails to preserve evidence when  
13 litigation's foreseeable, there's an extra burden because  
14 they're the ones who dictate when they're filling a  
15 lawsuit. This lawsuit wasn't filed a year afterwards.  
16 This lawsuit was filed months. And it was foreseeable  
17 years beforehand. And to say otherwise is in direct  
18 contradiction to the e-mails, to the discussions, and to  
19 the letters that were sent to Mr. Katz leading up to the  
20 January or February or beginning of the season  
21 operational meeting.

22           And to say it was just an operational meeting  
23 and therefore, this wasn't discussed, is self-serving and  
24 obviously not true because in 2011, was also an  
25 operational meeting and guess what? This wasn't

## Proceedings

1 discussed. And he had an obligation to preserve.

2           Additionally, your Honor, we're quite troubled  
3 by the fact that during the deposition, counsel did not  
4 allow us to get more detailed information regarding who  
5 knew about these recordings, whether counsel knew about  
6 these recordings, whether he was admonished by counsel  
7 not to destroy these recordings, whether counsel failed  
8 to admonish him not to destroy these recordings, whether  
9 he did it on his own; certainly those are issues that  
10 must be delved into regarding this issue because it is a  
11 spoliation issue.

12           And I don't know what was on those tapes. And  
13 Mr. Katz's self-serving declaration does not serve in any  
14 way to remove the violation and the impermissible action  
15 of destroying or discarding these recordings, your Honor.

16           THE COURT: All right. Mr. Tokayer?

17           MR. TOKAYER: Yes, we addressed this all in our  
18 papers, your Honor. The litigation in the early part of  
19 2010 was not only foreseeable it was something that  
20 Kosher Sports did not have in mind at all. There's no  
21 evidence that he consulted any attorneys at that time.  
22 He had no issues with Aramark. All his issues at that  
23 time were with QBC. And the conversation was with  
24 Aramark, who is still not a party to this action and he  
25 didn't have an issue with until sometime after April of

## Proceedings

1 2011.

2 He preserved all the documents are the  
3 litigation commenced. And he didn't commence the  
4 litigation until after Kosher Sports terminated his  
5 contract and QBC terminated Kosher Sports contract  
6 unilaterally in I believe it was either April or May of  
7 2010.

8 We set forth the standard for spoliation  
9 sanctions in our papers. The burden is on the defendant  
10 -- on the parties seeking sanctions to show that there  
11 was a duty and that there was culpable action and that  
12 the evidence would have been relevant to the aggrieved  
13 parties case. The conversation allegedly was with  
14 Mr. Funk. Mr. Funk was here. Mr. Funk is available.  
15 Mr. Funk testified that he didn't discuss Friday and  
16 Saturday sales with Kosher Sports at that time. And  
17 we've submitted exhibits to that effect.

18 The rest of the argument is set forth in our  
19 papers. We don't believe there's any basis and that we  
20 don't believe that QBC has even made a prima facie case  
21 under the law for such sanctions.

22 MR. MEHLMAN: Your Honor, just for the record,  
23 the April 14, 2009 letter from Mr. Katz says I will  
24 consult with my legal counsel as to whether to bring  
25 legal action. I'm not sure Mr. Tokayer can say that

## Proceedings

1 legal action was not foreseeable or contemplated or that  
2 he didn't even have a legal team or wasn't consulting  
3 with a lawyer.

4           Additionally, the 2010 e-mail uses phrases that  
5 are clearly very technical and very legal. But moreover,  
6 your Honor, I don't know who that conversation was with.  
7 I don't know who was at that conversation in 2010. I  
8 don't know what was discussed. There's an obligation  
9 under the law to preserve evidence, to preserve evidence  
10 when the litigation is foreseeable. Litigation was  
11 foreseeable and Mr. Katz destroyed the 2010 tape of the  
12 operational meeting, similar to the operational meetings  
13 in 2011.

14           And regardless of the fact that the meeting was  
15 with Aramark, that in no way relieves Mr. Katz or casts  
16 asides its obligation. They've proffered a 2011  
17 conversation with Aramark as evidence in this case. And  
18 Aramark is still not a party. So that argument really  
19 does not hold water at all, your Honor.

20           These conversations were recorded. They were  
21 recorded for a purpose and they were destroyed.

22           THE COURT: And just remind me which years were  
23 recorded?

24           MR. MEHLMAN: He testified that he recorded many  
25 conversations. In fact, his testimony goes back to the



## Proceedings

1 2009 operational meeting and conversations.

2 And then he went further and testified that he  
3 recorded his 2010 conversation, operational conversation,  
4 leading up to the season where this issue most probably  
5 would be addressed. And Mr. Kleckner testified today that  
6 he had discussions with Mr. Katz prior to 2011 with regard  
7 to Mr. Katz's intent to operate on Friday night and  
8 Saturday.

9 MR. TOKAYER: Your Honor, even the 2010 meeting  
10 is not relevant to any issue in this case. We did not  
11 identify it in response to our Rule 26 motion. And we  
12 only used it to impeach witnesses from Aramark after it  
13 became evidence that there was a breach of the --  
14 Judge Weinstein's order which wasn't issued until August  
15 of 2010.

16 MR. MEHLMAN: Your Honor, just to make it clear,  
17 the reason it was used only for impeachment is because the  
18 Court levied a sanction against KSI and told KSI they  
19 couldn't use it but for impeachment. It was always the  
20 intent of KSI to use that in their case in chief. And  
21 that's why they did not reveal it. It was only after we  
22 discovered the fact that it existed and the Court's  
23 concern with the fact that it was not produced as it should  
24 have been produced, did the Court levy a sanction against  
25 Mr. -- sanction a ruling against KSI and order that it

Proceedings

1 only be used as impeachment. So that argument is really  
2 unfair, your Honor. It's not really accurate.

3 MR. TOKAYER: Your Honor, I stated that I was  
4 only using it for impeachment purposes prior to the  
5 Court's ruling.

6 MR. MEHLMAN: And this conversation doesn't just  
7 go to the contempt issue. It goes to all claims in this  
8 case. I don't know what the discuss --

9 THE COURT: If you can just find the portion of  
10 the reopened deposition in which --

11 MR. MEHLMAN: Sure.

12 THE COURT: -- Mr. Katz testified that he  
13 recorded other conversations. I would like to look at  
14 that portion.

15 MR. MEHLMAN: Your Honor, I'm going to give that  
16 to the Court right now. It's -- yes, your Honor, if you  
17 look at page 346, line 19. The question I ask Mr. Katz on  
18 January 20, 2011 was as follows:

19 "Question: Have you taped any of the  
20 conversations between yourself and Aramark other than  
21 these two conversations; the January 6, 2011 conversation,  
22 the April 6, 2011 conversation?

23 "Answer: I have taped conversations before;  
24 yes.

25 "Question: What dates were those conversations

Proceedings

1 from?

2 "Answer: I have no idea. They're over the  
3 course of eight years.

4 "Question: Were those taped conversations --  
5 where are those taped conversations now?

6 "Answer: Arrest -- erased. I'm sorry. They're  
7 just operational conversations in normal business practice  
8 of going to meetings and trying to remember a fifty minute  
9 conversation."

10 Then further, on page 387, line 18 through 21:

11 "Question: Prior to the 2010 season, your  
12 operational meeting with Aramark that you taped without  
13 their knowledge?"

14 THE COURT: I'm sorry, what page are you on now?

15 MR. MEHLMAN: Page 387, line 18.

16 "Question: Prior to the 2010 season, your  
17 operational meeting with Aramark that you taped without  
18 their knowledge?

19 "Answer: Yes."

20 And then page 389, line 10:

21 "Question: Other than the January 6, 2011  
22 operational meeting, you only taped one additional meeting  
23 with Aramark referencing Citi Field?

24 "Answer: I might have taped the one before the  
25 2009 season but I don't recall.

Proceedings

1           "Question: The operational meetings that you  
2           taped prior to 2010 season, where is that? Where are the  
3           contents of that conversation today?

4           "Answer: They don't exist anymore. They were  
5           deleted.

6           "Question: When were they deleted?

7           "Answer: I have no idea."

8           Now here, your Honor, I did not raise this but  
9           this is also quite troubling. I asked him page 4 -- I'm  
10          sorry, page 391, line 13:

11          "Question: Do you know if you destroyed the  
12          contents of that conversation before or after you  
13          commenced the 2010 lawsuit against QBC?

14          "Answer: I have no idea."

15          And then I further questioned him about having  
16          no idea and he was so committed to the fact that he had no  
17          idea. Then there's a break. Mr. Tokayer and Mr. Klein  
18          leave the deposition with their client. He then comes  
19          back in and clarifies his "I have no idea" which he  
20          repeated at least three different times. In fact, one of  
21          the times when he repeated it he said, "You wouldn't  
22          remember what happened two years ago, would you? I have  
23          no idea."

24          He goes out, consults with his lawyers in the  
25          middle of a deposition, comes back and clarifies his "I

## Proceedings

1 have no idea" to "It was before the commencement of the  
2 litigation."

3 And I attempted to question Mr. Katz about what  
4 refreshed his recollection or what refreshed his  
5 recollection and allowed him to clarify this change in an  
6 answer after he was so sure he had no idea. And Mr.  
7 Tokayer refused to allow Mr. Katz to answer those  
8 questions.

9 And as the Court's well aware, in the middle of  
10 a deposition, that he leaves the room and comes back and  
11 clarifies -- he didn't clarify his answer your Honor. He  
12 changed his answer. You don't say I have no idea four  
13 different times, leave the courtroom with your lawyers,  
14 come back and then change your answer if something didn't  
15 go outside. And I asked for that information and I  
16 believe under the rules I am entitled to know what went on  
17 outside.

18 I apologize for getting excited but I take these  
19 things very seriously.

20 THE COURT: Mr. Tokayer?

21 MR. TOKAYER: Yes, we addressed all of this in  
22 our papers. There was no duty for him to preserve that  
23 information at the time. It was an operational meeting.  
24 There was nothing relevant about it.

25 THE COURT: Well that is what he says.

Proceedings

1 MR. TOKAYER: Yes.

2 THE COURT: But the transcript of his testimony  
3 suggests that he began this operation, this recording, in  
4 2009.

5 MR. TOKAYER: No, I think he said he --

6 THE COURT: Initially, he said that he can't  
7 remember. It's over the course of eight years but then  
8 later in his testimony he says I recorded the prior year  
9 and perhaps the year before that. So we're talking about  
10 2009 and 2010. And certainly that fits within the time  
11 line of the percolation of this dispute and communications  
12 going back and forth about possible litigation.

13 It certainly suggests that he began to do this  
14 at a time when he expected that they might prove useful to  
15 him.

16 MR. TOKAYER: Litigation with QBC was not even  
17 foreseeable. There was never an issue with Aramark.  
18 Never had a problem with Aramark. Never sued Aramark.  
19 Never contemplated suing Aramark. And even the  
20 conversation in 2010 --

21 THE COURT: But that doesn't mean that he --

22 MR. TOKAYER: There's no --

23 THE COURT: -- obtain evidence that would be  
24 useful --

25 MR. TOKAYER: How could --

Proceedings

1 THE COURT: -- for him.

2 MR. TOKAYER: How could any evidence with  
3 Aramark -- any conversation with Aramark be useful in an  
4 action with QBC? QBC was the one who was stopping them  
5 from operating on Fridays and Saturdays and he had no  
6 issue with Aramark.

7 THE COURT: You spent a lot of time using those  
8 tapes in cross-examining the witnesses in this hearing.  
9 So how can you sit there and say how can they be relevant?

10 MR. TOKAYER: Of Aramark and only with respect  
11 to what Aramark did in April of 2011.

12 MR. MEHLMAN: There's a --

13 MR. TOKAYER: Aramark never -- there's no  
14 evidence that Aramark ever stopped or tried to stop  
15 Mr. Katz from operating on Fridays and Saturdays. The one  
16 communication he had with Aramark about Fridays and  
17 Saturdays, was never responded to by Aramark. And  
18 instead, it was the Mets who unilaterally issued all of  
19 these e-mails and stopped them from operating. The Mets  
20 controlled the ballpark. The Mets controlled Friday and  
21 Saturday sales and it was the Mets with whom Mr. Katz was  
22 having a dispute.

23 There's still no evidence that he ever consulted  
24 a lawyer, no matter what saber-rattling he may have done  
25 and there's there's no evidence that he had any intent

Proceedings

1 other than to act in the ordinary course of his business.  
2 He taped some meetings and he taped over some meetings.  
3 And he discarded the recorder because it was aged and  
4 because it no longer served its purpose.

5 THE COURT: So --

6 MR. TOKAYER: Ad it was months before the  
7 litigation was even commenced, certainly months before he  
8 ever consulted with an attorney with respect to this.

9 THE COURT: Well I don't know that there's any  
10 evidence one way or the other about that but what there is  
11 in evidence is a letter that he wrote on April 14 in 2009  
12 when he says I discussed with my lawyer whether to bring  
13 an action.

14 MR. TOKAYER: He said -- wait. Are you  
15 referring to the April 18, 2009 letter?

16 THE COURT: I thought it was April 14. I may  
17 have written down the date wrong.

18 MR. MEHLMAN: It's April 14. You're correct,  
19 your Honor.

20 MR. TOKAYER: He said, "I will consult with my  
21 legal counsel."

22 MR. MEHLMAN: This is --

23 MR. TOKAYER: First of all, it doesn't say that  
24 he did consult with him or that he even had legal counsel.  
25 That's the kind of letter clients write when they are



Proceedings

1   saber-rattling. This is a year before --

2               THE COURT: But doesn't that discuss that  
3   litigation is foreseeable because he is rattling the saber  
4   of litigation?

5               MR. TOKAYER: With QBC and -- no, it's --  
6   there's no evidence that he ever consulted with an  
7   attorney at that time. And in fact, this --

8               THE COURT: Well do we want to have a hearing on  
9   when he first consulted with counsel? I will tell you, I  
10  am very troubled by this because based on the evidence  
11  before me, he starts taping these operational meetings in  
12  perhaps as early as 2009, certainly in 2010. 2009 is when  
13  he's already rattling the saber of litigation.

14              And while you say that he had no issue with  
15  Aramark, at least from the tapes that have been preserved,  
16  it is clear that he was using those meetings as a way of  
17  extracting statements from Aramark that he thought would  
18  support his claims or potential claims against QBC.

19              MR. TOKAYER: Your Honor, with respect to --  
20  that is not the testimony and the fact that the --

21              THE COURT: That's the tape.

22              MR. TOKAYER: No, but the tape in context does  
23  not support that.

24              MR. MEHLMAN: Your Honor, there's also a  
25  tortious interference claim in which KSI alleges that QBC

Proceedings

1 tortiously interfered with their contract with Aramark.

2 Our conversations with Aramark --

3 MR. TOKAYER: That claim was brought after April  
4 of 2011. That's exactly my point.

5 THE COURT: Well I think this is an other  
6 example of splitting hairs because I -- on the part of the  
7 plaintiff. I think there's sufficient information in the  
8 record from which to conclude that litigation was  
9 certainly reasonably foreseeable at the time that he was  
10 taping these conversations. And that these conversations  
11 could be useful in connection with the litigation. I'll  
12 reserve decision on that.

13 Let's -- do you want to argue your cross-motion?

14 MR. TOKAYER: Yes. Again it's in our papers.  
15 And by the way, you heard evidence that today that not  
16 only were the minutes not produced in this case, but the  
17 minutes were circulated by e-mail, so that the e-mails  
18 and the minutes should have been found through the  
19 electronic search that they had performed back earlier  
20 this year.

21 And it took us all kinds of -- we had to go and  
22 conduct non-party subpoenas and discovery of Aramark, only  
23 to find snippets by the way of these minutes. Apparently  
24 Aramark themselves do not hold all of their e-mails. But  
25 the few e-mails that we were able to find led us to these

## Proceedings

1 minutes, minutes that should have been produced by QBC and  
2 should have been found in the electronic search because as  
3 Mr. Landeen testified, both at his deposition and today,  
4 those minutes of those meetings were circulated by e-mail  
5 and they clearly referred to Kosher, Kosher Sports, John  
6 Katz, and other search terms that QBC supposedly used in  
7 making their production.

8 THE COURT: But they were circulated as an  
9 attachment.

10 MR. TOKAYER: Yes, it included attachments.

11 THE COURT: Well no one has presented to me what  
12 the parties agreed upon a search protocol was.

13 MR. TOKAYER: Yes, I have, your Honor.

14 THE COURT: No, what you've provided to me is  
15 the proposal for the particular terms but I don't have the  
16 complete search protocol and I know from previous  
17 experience with a dispute over electronic searches and, in  
18 fact, in a case that you cited in your submission to me,  
19 that there are -- that searches can be performed and  
20 depending on the format of the attachment, a word search  
21 will not -- may not pick up an attachment.

22 MR. TOKAYER: The search terms were agreed upon.  
23 Magistrate Carter demanded that we agree upon these terms,  
24 report it back to the Court that these are the terms that  
25 we agreed upon and I believe that it was -- the

## Proceedings

1 extraction, we say here should include attachments and the  
2 entire e-mail prior and responsive e-mails which do not  
3 contain -- which do not contain the key words It would  
4 include attachments and, in fact, the entire e-mail  
5 string. And this is what we agreed upon. This is what we  
6 reported to Judge Carter that we had agreed upon. These  
7 documents should have been found in their electronic  
8 search.

9 THE COURT: Well --

10 MR. MEHLMAN: Which means that he wants the  
11 document as identified but the extract produced should  
12 have included the entire e-mail string. So it doesn't  
13 mean that the search was necessarily --

14 THE COURT: Well, my law clerk just pointed out  
15 which was my experience in the Nycomed case that you cited  
16 and that is that the -- if the document contains a term  
17 that is within the agreed upon search term and the  
18 document is located, then the entire document including  
19 attachments has to be produced, doesn't necessarily mean  
20 that the attachment -- that a search is going to pick up  
21 words that appear in the attachment but not in the  
22 document itself.

23 MR. TOKAYER: I don't know because they haven't  
24 explained that. And I will say also that these documents  
25 were supposed to be produced, irrespective of any

Proceedings

1 electronic document search. We were entitled to these  
2 documents. They were called for and they were belatedly  
3 produced.

4 THE COURT: They were belatedly produced --

5 MR. TOKAYER: After we found their existence --

6 THE COURT: Although --

7 MR. TOKAYER: -- through on-party discovery.

8 THE COURT: And you found them in the middle of  
9 May and you did examine the witnesses at deposition on  
10 those documents, other than I guess there was one that was  
11 produced today.

12 MR. TOKAYER: Yes, and I believe that -- we only  
13 got a few of those documents heavily redacted from  
14 Aramark. We did not get many of the documents that we  
15 used today, in fact, at the hearing.

16 THE COURT: Well what was redacted though? Were  
17 those items on the agenda or in the minutes that had  
18 nothing to do with Kosher Sports or the issues in this  
19 case?

20 MR. TOKAYER: That may be true. I don't know  
21 but --

22 MR. MEHLMAN: We --

23 THE COURT: Well, I saw an example --

24 MR. TOKAYER: We got them --

25 THE COURT: -- of a redacted --

Proceedings

1 MR. TOKAYER: But they were definitely --

2 THE COURT: -- rather than the full document.

3 MR. TOKAYER: There were definitely documents  
4 that were not produced by Aramark that were produced  
5 belatedly by Kosher Sports which we use and relied upon  
6 today that were not found by Aramark -- were not produced  
7 by Aramark.

8 THE COURT: In your motion you cited two basis  
9 for why these documents were responsive. One was that  
10 they should have been produced as part of the electronic  
11 search. The other was that they were responsive to a  
12 specific request. That specific request was served in  
13 early June and the response that you received was bout two  
14 weeks later. So were there other requests earlier that  
15 these would have been responsive to?

16 MR. TOKAYER: That's my understanding. That's  
17 what I will have to look -- I would look for.

18 THE COURT: Well --

19 MR. TOKAYER: I could look for it now.

20 (Pause.)

21 THE COURT: Mr. Mehlman?

22 MR. MEHLMAN: Just briefly, your Honor. They  
23 weren't specifically requested until June 17, your Honor.  
24 When we became of these, we did everything that we --

25 THE COURT: No, I think they were turned over on

## Proceedings

1 June 17.

2 MR. MEHLMAN: Oh, I'm sorry. They were turned  
3 over June 17. I'm sorry. They weren't due until July 6  
4 based upon Mr. Tokayer's third discovery demand. And they  
5 were turned over as laid out in our papers, eleven days  
6 after the request and certainly before the due date of  
7 July 6.

8 And the reason they were turned over, your  
9 Honor, is once we found we were able to find them and some  
10 of them might have been a hard copy, some of them were as  
11 attachments to e-mails. We turned them over to  
12 Mr. Tokayer prior to the deposition or the reopening of  
13 the deposition of Mr. Kleckner.

14 And Mr. Tokayer had an opportunity to question  
15 him or at least we, QBC, did not in any way inhibit  
16 Mr. Tokayer from asking those questions.

17 What I'm troubled about is, is that Mr. Tokayer  
18 sent us an e-mail the Monday -- I'm sorry, the Tuesday  
19 after the Friday of when it was turned over. It was  
20 turned over on Friday. On Monday, during the deposition  
21 of Mr. Katz, the reopening of the deposition of Mr. Katz,  
22 he said "You never turned over the minute meetings."

23 We said "We did. We turned them over on Friday.  
24 We e-mailed them to you on Friday."

25 He said "Well I don't remember seeing them."

## Proceedings

1           We got an e-mail then on Tuesday. I received  
2 the agenda and minutes, why were they not previously  
3 produced and we detailed in an e-mail why they weren't  
4 previously produced. We also said that if you want to,  
5 you can call Mr. Kleckner. We don't control Mr. Kleckner  
6 but we did not oppose you questioning Mr. Kleckner. And  
7 we didn't oppose you calling Mr. Landeen. And we will  
8 provide Mr. Landeen for you if you wanted to reopen it, so  
9 that he would not be prejudiced. And we also put in the  
10 end of the e-mail that should he make a motion, that he  
11 should apprise the Court of what opposition was. And that  
12 was not done.

13           And I know when motions are made and positions  
14 are laid out, it's appropriate to layout a position,  
15 especially in this type of motion when it comes to  
16 sanctions motion.

17           We found the minutes. We turned them over. We  
18 turned them over in a fashion that was almost within a few  
19 days of when we received them.

20           THE COURT: Why weren't they found earlier?

21           MR. MEHLMAN: I think the reason they weren't  
22 found earlier was because they were attachments and the  
23 attachment did not reference the e-mail, the cover e-mail  
24 doesn't say Kosher, okay, or Katz or any of those things.

25           THE COURT: That wasn't what you said in your



Proceedings

1 submission to the Court. You said they were maintained  
2 only in hard copy.

3 MR. MEHLMAN: I'm going to let Mr. Adler address  
4 this. He is our guru when it comes to these things.  
5 So --

6 MR. TOKAYER: And your Honor, there were other  
7 exhibits that we marked today and used in court that are  
8 e-mails themselves that contain those search words that  
9 weren't produced, such as Exhibit 22.

10 MR. ADLER: Yes, your Honor. The first time  
11 around my understanding of why these weren't picked up by  
12 the ESI terms which just for the record, those were the  
13 terms disclosed by the plaintiff and just run based on  
14 their suggestion that were run. They weren't -- they  
15 didn't show up initially because of the limitation the  
16 Court just noticed where there's a cover e-mail and a  
17 responsive term is not in that cover e-mail, then  
18 something in the attachment wouldn't get picked up. And  
19 so, in the course --

20 THE COURT: But that isn't what the Court was  
21 told.

22 MR. ADLER: Well, no, no. As I am -- what I was  
23 about to say, your Honor, is that once it became -- it  
24 came to our attention that these meeting minutes existed,  
25 which came out during the subsequent deposition, we had

## Proceedings

1 our client go back and specifically look for them. And at  
2 that point, they were located only in hard copy form.

3 And so, you know, we've been trying to follow-up  
4 on this. As soon as something's been brought to our  
5 attention, we've been going and following up and trying to  
6 figure out why they weren't picked up initially by the big  
7 ESI search. And I think the reason for that is now  
8 apparent.

9 And so we produced as we indicated in our  
10 letter, what was located initially in hard copy form and  
11 then today, where it became apparent that there was still  
12 one set of meeting minutes missing, we went back and tried  
13 to retrace what was going on there and that's when we  
14 discovered that there were, you know, two meeting minutes  
15 with the same dates.

16 MR. MEHLMAN: And that they were e-mailed as  
17 attachments.

18 MR. ADLER: Right.

19 MR. MEHLMAN: And that then came to the  
20 reasoning why they most probably were not picked up. But  
21 your Honor, they were not destroyed. They were not thrown  
22 out or discarded. They have been produced. We've  
23 maintained from day one that we can't produced  
24 Mr. Kleckner. We asked Mr. Kleckner to stay and allow  
25 Mr. Tokayer to be questioned. In fact, on the record at

## Proceedings

1 the end of Mr. Kleckner's deposition I specifically said,  
2 "Will Mr. Kleckner stay on and be questioned about these  
3 minutes, knowing that there may be a motion."

4 Mr. Kleckner's attorney independently made a  
5 decision that they didn't think that it was appropriate  
6 for him to stay because they were only ordered back for  
7 the deposition for a limited reason.

8 We also made Mr. Landeen available and  
9 Mr. Tokayer never asked to have Mr. Landeen brought  
10 forward to reopen the deposition. We don't see any  
11 prejudice that there should be any reason for any  
12 sanctions.

13 They have been turned over and if they want to  
14 reopen Mr. Landeen's -- for that limited purpose, we'd be  
15 more than happy. We offered it right away.

16 THE COURT: All right.

17 MR. TOKAYER: I don't understand, your Honor,  
18 why they're only in hard copy form because they were  
19 created by Mr. Landeen's secretary electronically  
20 obviously.

21 THE COURT: Right. But they were --

22 MR. TOKAYER: And with respect to --

23

24 MR. MEHLMAN: They were attached to -- I'm  
25 trying to explain, they're attachments. So if the e-mail

## Proceedings

1 that -- they were picked up only because we asked  
2 Mr. Landeen's secretary to go back and do a search not for  
3 Kosher or Kosher Sports but go do a search for any  
4 minutes, any meeting minutes and their attachments.

5 That's why they were picked up this time. It's  
6 not -- it's not the cover e-mail that's the issue. It's  
7 the attachment to the cover e-mail. And also frankly,  
8 your Honor, we could have met and conferred on this motion  
9 prior which is an obligation. We would have explained to  
10 Mr. Tokayer as we did in our e-mail which we e-mailed him  
11 prior to the making of the motion, what happened and give  
12 him an opportunity -- even I was willing to call  
13 Mr. Brennan and ask Mr. Kleckner to come back on my dime  
14 and be allowed to be -- and I don't know that a motion  
15 was necessary.

16 I believe the motion was just a knee-jerk  
17 reaction to QBC's motion on the spoliation issue and  
18 you're really comparing apples and oranges. You're  
19 talking about destroyed documents and destroyed recordings  
20 as opposed to documents that were turned over and were  
21 produced and there is no prejudice involved at all.

22 MR. TOKAYER: That doesn't explain, your Honor,  
23 why Exhibit 22 which is a document we got from Aramark  
24 which came from the Mets wasn't produced.

25 MR. MEHLMAN: I don't believe that's part of his

Proceedings

1 motion, your Honor. I don't know if he's amending his  
2 motion now or if he's filing a new motion or making a new  
3 motion.

4 MR. TOKAYER: Well what I am saying is that the  
5 story about the attachments doesn't carry through to  
6 matters such as Exhibit 22 which is an e-mail itself.

7 THE COURT: Well if you have another application  
8 to make, this is the first time I'm hearing that. And I  
9 think I have enough on my plate already. If you want to  
10 meet and confer about why you didn't get that, you can do  
11 that.

12 MR. MEHLMAN: But then also, your Honor --

13 MR. TOKAYER: In response to your Honor's  
14 question, in our very first document request, items 24  
15 seeks correspondence between defendant and Aramark  
16 concerning plaintiff and/or KSI Food Products. 25 asks  
17 for documents and correspondence between defendant and any  
18 person concerning plaintiff and/or KSI Food Products.  
19 Document 26, documents constituting correspondence  
20 concerning plaintiff and/or KSI Food Products. 27 os  
21 documents concerning plaintiff and/or KSI Food Products.  
22 These documents are responsive to those items.

23 THE COURT: and what was the parties'  
24 understanding about what documents would be searched for  
25 responsive items?

Proceedings

1 MR. TOKAYER: The electronic search was not in  
2 lieu of a hard copy search for other documents. That was  
3 not my understanding.

4 MR. MEHLMAN: Your Honor, we did --

5 THE COURT: I don't know what the understanding  
6 was. I'm asking --

7 MR. MEHLMAN: I don't know that that was  
8 discussed in detail. And I think that Mr. Tokayer saying  
9 that that was discussed in detail, I don't know how he  
10 could remember. I don't think that was discussed in  
11 detail.

12 He gave us search items. We accepted his search  
13 items. And we did the search and we have turned over in  
14 excess of thousands and thousands of documents, your  
15 Honor. He asked specifically his third interrogatory for  
16 these minutes. We turned them over within eleven days  
17 prior to Mr. Kleckner's testimony. I don't believe  
18 there's been any prejudice at all. Mr. Tokayer wants to  
19 have Mr. Landeen come back for a deposition, limited to  
20 those documents, I'd be more than happy to make those  
21 arrangements.

22 MR. TOKAYER: Yes.

23 MR. MEHLMAN: He has not asked for that and he  
24 did not ask for that prior to his motion.

25 MR. TOKAYER: Your Honor, I did seek to ask

Proceedings

1 Mr. Kleckner about these documents at his deposition and I  
2 was prevented from doing so by Aramark's attorney. 1  
3 Not by QBC, your Honor.

4 THE COURT: But he was questioned about it at  
5 the hearing today.

6 MR. MEHLMAN: That's --

7 MR. TOKAYER: We did use these documents at the  
8 hearing.

9 THE COURT: All right. Court is adjourned.  
10 I'll take all these matters under advisement.

11 (Matter concluded)

12 -o0o-

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

**David Howard:**

Direct Examination by Mr. Tokayer. . . . . 18

Cross-Examination by Mr. Mehlman. . . . . 28

**Jonathan Katz:**

Direct Examination by Mr. Tokayer. . . . . 29, 263

Cross-Examination by Mr. Mehlman. . . . . 61

Redirect Examination by Mr. Tokayer. . . . . 104

Recross-Examination by Mr. Mehlman. . . . . 106

**Michael Landeen:**

Direct Examination by Mr. Tokayer. . . . . 107

Cross-Examination by Mr. Mehlman. . . . . 157

Redirect Examination by Mr. Tokayer. . . . . 166

**Thomas Funk:**

Direct Examination by Mr. Tokayer. . . . . 179

Cross-Examination by Mr. Mehlman. . . . . 203



I N D E X

(Continued)

**Scott Kleckner:**

Direct Examination by Mr. Tokayer. . . . .	206
Cross-Examination by Mr. Mehlman. . . . .	227
Redirect Examination by Mr. Tokayer. . . . .	236
Direct Examination by Mr. Mehlman. . . . .	254

**Richard Grey:**

Direct Examination by Mr. Tokayer. . . . .	256
Cross-Examination by Mr. Mehlman. . . . .	261

**Closing Argument:**

by Mr. Tokayer. . . . .	272
by Mr. Mehlman. . . . .	293